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ALEXANDER L. STEVAS,
CLERK

Nos. 80-415 and 80-1239

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

RAILWAY LABOR EXECUTIVES' ASSOCIATION, *Appellant*,

v.

WILLIAM M. GIBBONS, Trustee of the Chicago, Rock Island & Pacific Railroad Company; CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Indenture Trustee; FIRST NATIONAL BANK OF CHICAGO, as Indenture Trustee; HENRY CROWN, ET AL.; UNITED STATES OF AMERICA; INTERSTATE COMMERCE COMMISSION; and ANDREW L. LEWIS, JR., Secretary of Transportation, *Appellees*.

Consolidated Appeals From The United States District Court For The Northern District Of Illinois And From The United States Court Of Appeals For The Seventh Circuit

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JOINT APPENDIX

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(Counsel for Other Appellees Listed On Reverse Page)

NO. 80-415, APPEAL DOCKETED SEPTEMBER 15, 1980
PROBABLE JURISDICTION POSTPONED APRIL 27, 1981
NO. 80-1239 APPEAL DOCKETED JANUARY 21, 1981
PROBABLE JURISDICTION NOTED APRIL 27, 1981

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N.D. Ill. No. 75 B 2697

In re Chicago, Rock Island & Pacific Railroad Co., debtor

UNITED STATES DISTRICT COURT

N.D.Ill. No. 75 B 2697

3-17-75 FILED PETITION OF CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD IN PROCEEDINGS FOR REORGANIZATION OF A RAILROAD UNDER SECTION 77.

• • •

3-18-75 Enter order dated March 14, 1975.

Ordered that in the event that the Chicago Rock Island files a petition in bankruptcy, the Clerk is hereby directed to assign case to Hon. Frank J. McGarr, Dist. Judge—DFT—Exec. Com.

• • •

3-18-75 Enter order dated March 17, 1975.

Enter order *No. 1* that petition is approved as properly filed under Section 77 of the Bankruptcy act (11 U.S.C. Sec. 205). Debtor is authorized to operate pending further order of Court. Debtor shall close its present books as of midnight on March 16, 1975 and open new books as of 12:01 a.m. on March 17, 1975. Statement to be filed May 16, 1975 and within 60 days thereafter. Parties are restrained until further order of Court. Hearing set for March 28, 1975 at 2:00 P.M. for the appointment of one or more Trustees of the Debtor—Draft—McGarr, J. Mailed notices 3-18-75. Y

• • •

3-31-75 Enter order dated March 28, 1975.

Enter order *No. 3,* appointing William M. Gibbons of 33 N. Dearborn Street, Chicago, Illinois as Trustee. Bond of Trustee is fixed at $100,000.00—Draft. Embargo date is extended to May 15, 1975—McGarr, J. Mailed notices 3-31-75. Certified—copy to ICC.

• • •

3-28-75 Filed appearance of Railway Labor Executives Assn., et al. and that of William G. Mahoney as attorney.

3-28-75 Filed affidavit William G. Mahoney, pursuant to Rule 39.

3-28-75 Filed Motion of Railway Labor Exec., Association, The Congress of Railway Unions, The Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers to intervene.

3-31-75 Enter order dated March 28, 1975.

Enter order allowing, intervention of Railway Labor Executives Association, Congress of Railway Unions and Brotherhood of Railway Clerks, etc.—Draft—McGarr, J. Mailed notices 3-31-75. Y

• • •

9-10-79 Filed 9-6-79 Motion of Indenture Trustees and Intervenors Crown et al. for an order directing Trustee to cease freight operations and to commence liquidation of debtors estate. P

• • •

9-10-79 Filed 9-6-79 Response of Intervenors Crown et al. to Trustees report for 1978 and four months 1979. P

• • •

9-13-79 Enter order dated 9-10-79: Conference held. Trustee and any other parties are given until October 19, 1979 to respond to motion of Indenture Trustees and Intervenors Crown et al. for an order directing the Trustee to cease freight operations and to commence liquidation of the Debtors Estate. Trustee in addition to filing his response to file petition for leave to borrow 30 million dollars. Court will set oral argument on motion, responses and petition shortly after October 19, 1979 and all pleadings are filed—McGarr, J. Mailed notices 9-13-79. P

9-18-79 Enter order dated 9-14-79: Conference held. Order of September 10, 1979 is vacated. Time is shortened in which Trustee and any other party are to respond to motion of Indenture Trustees and Intervenors Crown, et al. for an order directing the Trustee to cease freight operations and to commence liquidation of the Debtors [*sic*] estate to October 5, 1979. Hearing on the motion of Indenture Trustees, etc. is set for October 10, 1979 at 11:00 a.m. Status hearing set for September 17, 1979 is vacated—McGarr, J. Mailed notices 9-17-79. P

• • •

9-25-79 Filed 9-25-79: Motion of the State of Kansas for an order directing Trustee to cease operations commence liquidation of the debtors [*sic*] estate and seek directed service from the Interstate Commerce Commission. P

9-27-79 Enter order dated 9-26-79: Trustee's oral application for authority to continue the operation of the debtors [*sic*] business pursuant to the Courts [*sic*] previous orders and until the further order of the Court, is denied without prejudice—McGarr, J. Mailed notices 9-27-79. P

• • •

10-12-79 Enter order dated 10-10-79: Hearing on motion of Indenture Trustees and Intervenor Crown, et al. for an order directing the trustee to cease freight operations and to commence liquidation held. Request declaring the debtor cashless is moot. Trustees [*sic*] authority to draw from escrow accounts to meet operating or other expenses is revoked. Request declaring that further expense of administration borrowings to support operations is not justified under Section 77(c)(3) of the Bankruptcy Act. etc. is granted and than [*sic*] is vacated. Request requiring the Trustee to cease all freight operations etc. is moot. Trustee is directed to commence immediate negotiations with the Regional Transportation Authority for the sale to it of Rock

Island commuter lines. Trustee is directed to file combined plan of reorganization not later than sixty days from today. Request that the Trustee take actiopns [*sic*] to effectuate the terms of Court's order etc. is moot. Courts [*sic*] witness, Peat, Marwick, Mitchell & Co. is directed to recast its study in consultation with the committee of the FRA, the creditors and the Trustee, etc. in the light of the Courts [*sic*] order. Status hearing set for November 1, 1979 at 2:00 p.m.—McGarr, J. Mailed notices 10-12-79. P

10-12-79 Enter order dated 10-10-79: Petition of Trustee to suspend all service and transportation is taken under advisement—McGarr, J. Mailed notices 10-12-79. P

• • •

10-12-79 Filed 10-11-79: Motion of the State of Texas for an order directing Trustee to case [*sic*] operations commence liquidation of the debtors estate and comply with directed service from the ICC.

• • •

10-12-79 Enter order dated 10-10-79: Order of October 10, 1979 is amended as follows: Hearing on motion of Indenture Trustees and Intervenor Crown, et al. for an order directing the Trustee to cease freight operations and to commence liquidation held. Request for declaration that the debtor is cashless is moot. Trustee's authority to draw from escrow accounts to meet operating or other expenses is revoked. Request requiring the Trustee to cease all freight operations, etc. is moot. Trustee is directed to commence immediate negotiations with the Regional Transportation Authority for the sale of it of Rock Island Commuter lines. Trustee is directed to file plan of reorganization not later than sixty days from today. Request that the Trustee take actions to effectuate the terms of courts [*sic*] order etc. is moot. Courts [*sic*] witness Peat, Marwick, Mitchell & Co. is directed to recast its study, in

consultation with the committee of the FRA. The creditors and the Trustee etc. in the light of the court's order. Status hearing set for November 1, 1979 at 2:00 p.m.—McGarr, J. Mailed notices 10-12-79. P

• • •

12-28-79 Filed 12-28-79 Notice re Plan

12-28-79 Filed 12-28-79 PLAN OF REORGANIZATION FOR CHICAGO ROCK ISLAND R. R. CO.

12-28-79 Filed 12-28-79 Appendix B to Plan of Reorganization (Volume I).

12-28-79 Filed 12-28-79 Appendix B to Plan of Reorganization (Volume II). P

1-3-80 Enter order dated 1-2-80: Status hearing held. Draft order to be submitted on courts forwarding Trustees [*sic*] plan of reorganization to the Interstate Commerce Commission. Pre-trial conference set for January 23, 1980 at 4:00 p.m.—McGarr, J. Mailed notices 1-3-80. P

1-3-80 Filed 1-2-80: Notice and State of Kansas motion to obtain a copy of Peat, Marwick, Mitchell & Company study.

1-3-80 Enter order dated 1-2-80: State of Kansas' motion to obtain a copy of the Peat, Marwick, Mitchell & Company's study is denied without prejudice—McGarr, J. Mailed notices 1-3-80. P

• • •

1-9-80 Enter order dated 1-8-80: Enter *Order No. 221* requiring proposed alternative plans or comments on Plan of Reorganization to be filed before January 28, 1980 as per draft—McGarr, J. Mailed notices 1-9-80. P

1-24-80 Filed 1-23-80 Peat, Marwick, Mitchell & Co. Phase II Report presenting our independent assessment of the Trustees [*sic*] Core System Plan. (large volume) P

• • •

1-28-80 Enter order dated 1-25-80: Intervenors Crown, et al's motion for an extension of time within which to file comments plan of reorganization, or modifications to the Trustees [*sic*] plan of reorganization is moot—McGarr, J. Mailed notices 1-28-30. P

1-28-80 Enter order dated 1-25-80: Trustees Petition for authority to issue Trustee's certificates pursuant to Section 77(c) of the Bankruptcy Act is moot—McGarr, J. Mailed notices 1-28-80. P

1-28-80 Enter order dated 1-25-80: Status hearing held. Arguments are heard. Motion of creditors that the Court decline to forward proposed Plan of Reorganization to Interstate Commerce Commission is granted. The proposed plan filed with the Court is deemed without merit and the Court declines to forward such plan to the commission [*sic*] as provided in Bankruptcy Rule 8-303. Trustee directed to commence preparation of preliminary plan for liquidation and creditors given leave to forward comments and suggestions as to such plan to Trustee with copies to the Court. Status hearing continued to February 19, 1980 at 2:00 p.m.--McGarr, J. Mailed notices 1-28-80. P

• • •

2-20-80 Filed 2-19-80 Railway Labor Executives' Associations' notice; comments on any plan proposed under order of this court docketed January 28, 1980. jm

• • •

2-20-80 Enter order dated February 19, 1980: Status hearing held. Comments of Railway Labor Executives' Association on any plan proposed under order of this Court docketed January 28, 1980 which was filed this day, will be considered as a motion to reconsider vacating the order of January 28, 1980. Said motion is taken under advisement. Status hearing continued to February 28, 1980 at 2:00 p.m.—McGarr, J. Notices mailed 2-20-80. jm

• • •

2-28-80 Enter order dated February 27, 1980: Motion of Railway Labor Executives' Association to reconsider the order of January 28, 1980 is denied.

• • •

3-14-80 Filed 3-13-80 RLEA's NOTICE OF APPEAL (orders 1-28-80 and 2-27-80). $70.00. jm

• • •

4-15-80 Enter order dated April 14, 1980: Motion to confirm the discontinuance of railroad operation is continued to June 2, 1980 at 2:00 p.m. Trustee to file with the Interstate Commerce Commission in 10 days an application of the type described in motion, with the Interstate Commerce Commission to file its response 30 days thereafter. Hearing on Interstate Commerce Commission's response set for June 2, 1980 at 2:00 p.m. McGarr, J. Notices mailed 4-15-80. jm

• • •

5-30-80 Filed 5-29-80 Nebraska Department of Economic Development's motion regarding total system abandonment of the Chicago, Rock Island & Pacific Railroad. jm

6-3-80 Filed 5-30-80 Oklahoma Department of Transportation's notice of filing; comments to be filed with Court on RI abandonment. jm

6-3-80 Filed 5-30-80 comments of Railway Labor Executives' Association in opposition to trustee's request to abandon his entire system. jm

6-3-80 Filed 5-30-80 Illinois Commerce Commission's notice of filing; memorandum of the People of the State of Illinois and the Illinois Commerce Commission. jm

6-3-80 Filed 5-30-80 Report of Trustee as to compliance with order No. 232; Exhibits. jm

• • •

6-3-80 Filed 6-2-80 Motion of Panhandle Regional Planning Commission in opposition to the application by

William M. Gibbons, trustee [*sic*] for confirmation of abandonment of certain Rock Island Lines in the Texas panhandle.

6-3-80 Enter order dated June 2, 1980: Motion of Panhandle Regional Planning Commission in opposition to the application by William M. Gibbons, trustee, for confirmation of abandonment of certain Rock Island Lines in the Texas panhandle is denied. McGarr, J. Notices mailed 6-3-80. jm

• • •

6-3-80 Enter order dated June 2, 1980: Hearing on application of trustee to confirm the discontinuance of railroad operations and response of the Interstate Commerce Commission and other parties held. Trustee's petition for abandonment will be granted and is so ordered. Draft order to be presented and to be order No. 248. Oral motion of Railway Labor Executives' Association for stay pending appeal is denied. McGarr, J. Notices mailed 6-3-80. jm

• • •

6-3-80 Enter order dated June 2, 1980: ENTER ORDER No. 248 that the total systems abandonment of Rock Island's lines and the discontinuance of all of its rail services and obligations as a common carrier is confirmed and decreed, etc. (DRAFT) McGarr, J. Notices mailed 6-3-80. jm

• • •

6-5-80 Filed 5-30-80 brief of the trustee and creditors for confirmation of abandonment of Rock Island Railroad Lines (including railroad subsidiaries and discontinuance of service). jm

• • •

6-9-80 Filed 6-5-80 Henry Crown et al's notice of filing.

6-9-80 Filed 6-5-80 Trustee and Creditors' COMPLAINT for declaratory judgment and injunctive relief. jm

6-9-80 Filed 6-5-80 plaintiffs' motion for temporary restraining order and preliminary injunction and supporting affidavit.

6-9-80 Enter order dated June 5, 1980: Plaintiffs' motion for temporary restraining order and preliminary injunction, (Trustee, Continental Bank, First National Bank, Crown, et al) is set for hearing on June 9, 1980 at 10:30 a.m. McGarr, J. Notices mailed 6-9-80. jm

• • •

6-9-80 Filed Railway Labor Executives' Association's #3 NOTICE OF APPEAL. $70.00. st

• • •

6-10-80 Filed 6-9-80 Henry Crown et al's notice of filing.

6-10-80 Filed 6-9-80 brief of the trustee and creditors in support of their motion for a temporary restraining order, preliminary injunction and declaratory judgment. (bound).

6-10-80 Filed 6-9-80 brief of the trustee and creditors in support of their motion for a temporary restraining order, preliminary injunction and declaratory judgment (bound—corrected). jm

6-10-80 Filed 6-9-80 certificate of service.

• • •

6-10-80 Enter order dated June 9, 1980: Hearing on motion for temporary restraining order and preliminary injunction and declaratory judgment, [*sic*] (Trustee, Continental Bank, First National Bank, Crown, et al) held. Court enters its findings of fact and conclusions of law from the bench. Motion for preliminary injunction will be granted. Order will issue. Oral motion for stay is denied.

• • •

6-10-80 Enter order dated June 9, 1980: Enter Preliminary Injunction—(DRAFT) McGarr, J. Notices mailed 6-10-80. jm

• • •

6-12-80 Filed 6-11-80 RLEA's NOTICE OF APPEAL to the
1 SC U.S. Supreme Court from order dated 6-9-80 (injunction). $5.00. jm

• • •

6-23-80 Filed 6-20-80 USA's notice of motion.

6-20-80 Filed 6-20-80 USA's motion to vacate preliminary injunction entered on June 9, 1980.

6-23-80 Filed 6-20-80 memorandum of points and authorities in support of the defendants' motion to vacate preliminary injunction entered June 9, 1980. st

6-23-80 Enter order dated June 20, 1980: Defendants' motion to vacate preliminary injunction entered on June 9, 1980 is heard and denied. McGarr, J. Notices mailed 6-23-80. st

• • •

6-23-80 Filed 6-20-80 memorandum of the Interstate Commerce Commission of points and authorities in support of defendants' motion to vacate preliminary injunction entered June 9, 1980. st

6-23-80 Filed 6-20-80 notice of filing; memorandum of Railway Labor Executives' Association in support of motion to vacate preliminary injunction; appendices. st

• • •

7-10-80 Filed 7-9-80 USA's NOTICE OF APPEAL to the U.S.
2 SC Supreme Court from order dated June 9, 1980. No FEE. st

• • •

10-8-80 Filed 10-7-80 motion of the United States of America for an order vacating the injunction entered by this Court on June 9, 1980 enjoining the trustee, the Interstate Commerce Commission, and the Secretary

of Transportation from complying with sections 106 and 110 of the Rock Island Transition and Employee Assistance Act.

10-8-80 Filed 10-7-80 memorandum of points and authorities of the United States of America in support of its motion to vacate preliminary injunction entered on June 9, 1980; attachments. jm

• • •

10-8-80 Enter order dated October 7, 1980: Motion of the United States of America to vacate preliminary injunction entered June 9, 1980 is taken under advisement. Parties to respond to said petition by 3:00 p.m. Friday, October 10, 1980, with reply to be filed on Tuesday morning, October 14, 1980. McGarr, J. Notices mailed 10-8-80. jm

10-8-80 Filed 10-7-80 memorandum of the Interstate Commerce Commission; attachment. jm

10-8-80 Enter order dated October 7, 1980: Motion of the Interstate Commerce Commission for declaration that the Commission not bound by June 9, 1980 injunction in implementing Section 701 of the Staggers Act or lifting of prior injunction is taken under advisement. Parties to respond to said petition by 3:00 p.m., Friday, October 10, 1980, with reply to be filed on Tuesday morning, October 14, 1980. McGarr, J. Notices mailed 10-8-80. jm

10-8-80 Filed 10-7-80 RLEA's notice of filing; motion by intervenor Railway Labor Executives' Association for an order vacating the preliminary injunction issued 6-9-80, and for an order directing the trustee to negotiate in accordance with Section 106(a) of the Rock Island Transition and Employee Assistance Act; attachments. jm

10-8-80 Enter order dated October 7, 1980: Motion by Intervenor Railway Labor Executives' Association to vacate preliminary injunction and to direct Trustee to negotiate is taken under advisement. Parties to respond to said petition by 3:00 p.m. Friday, October 10, 1980, with reply to be filed on Tuesday morning, October 14, 1980. McGarr, J. Notices mailed 10-8-80. jm

• • •

10-10-80 Filed 10-9-80 mailgram from John O'B. Clarke to Judge McGarr re: RLEA's request to vacate preliminary injunction. jm

• • •

10-14-80 Filed 10-10-80 brief of trustee and creditors in opposition to RLEA's motion to vacate the preliminary injunction and in support of the trustee's request for instructions or clarification and, in the alternative, in support of the motions of the trustee and creditors for a declaratory judgment that the Rock Island Act, as amended, remains unconstitutional. (bound). jm

• • •

10-17-80 Filed 10-14-80 reply of Railway Labor Executives' Association to response of trustee and creditors to motion to vacate preliminary injunction. ij

• • •

10-17-80 Enter order dated October 15, 1980; Enter Preliminary injunction. (DRAFT)—McGarr, J. Notices mailed 10-17-80. ij

10-17-80 Filed 10-16-80: Railway Labor Executive's Association notice of appeal. (Appeal #9).

• • •

10-23-80 Filed 10-14-80 Reply Memorandum of United States of America.

• • •

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10-23-80 Enter order dated 10-16-80: The preliminary Injunction entered October 15, 1980 is hereby corrected as follows:

(1) p. 1. lines 1 and 2 should read "This matter is before the court on the motion of the intervenor railway [*sic*] Labor Executives Association (RLEA) joined by the United States and the Interstate Commerce Commission, requesting this court . . . .

(2) p. 3, line 13 should read: ". . . Island estate with priority over claims of creditors and . . .

(3) P. 4, line 4 should read: ". . . arguments of counsel, the court orders the continuance of the preliminary . . ."

(4) P. 4, line 16 should read ": 4) the Court orders the continuance of the preliminary injunction: . . ." —McGarr, J.

Mailed notices 10-23-80. P

10-23-80 Filed 10-23-80 Notice of filing and Motion by Railway Labor Executives [*sic*] Association for a stay of preliminary Injunction pending Appeal.

• • •

10-29-80 Filed 10-23-80 Supplemental Memorandum of Railway Labor Executives [*sic*] Association in support of stay of preliminary injunction pending appeal.

• • •

10-29-80 Filed 10-29-80 *Notice of Appeal* by United States of America and The Interstate Commerce Commission and Neil Goldschmidt United States Secretary of Transportation from the Prel. Injn. order entered on October 15, 1980 enjoining enforcement of Sections 106 and 110 of Rock Island Transition Act.

• • •

10-30-80 Filed 10-29-80 Memorandum of Trustee and Creditors in Opposition to RLEA's motion to stay the preliminary Injunction pending appeal.

• • •

11-10-80 Enter order dated November 7, 1980: Railway Labor Executives' Association motion for reconsideration of this Court's denial of a stay of the Preliminary Injunction pending appeal is hereby denied.

• • •

Selected Docket Entries in

7th Cir. No. 80-2487

In re Chicago, Rock Island & Pacific Railroad Co.

Appeal of

Railway Labor Executives' Association

U.S. COURT OF APPEALS
SEVENTH CIRCUIT

Docket General No. 80-2487

• • •

Summary Of Events

Docketed: 10-21-80
Docket Fee Paid: yes
Appendix: 10/29/80, 11/10/80
Appellant's Brief: 10/29/80
Appellant's Brief: 11/12/80 corrected
Appellee's Brief: 11/10/80, dist.
Reply Brief: 11/12/80, dist. en banc
Notice of Oral Arg: 10/23/80
Briefs Distributed: Nov. 1980
Date of Oral Arg: 11/13/80
Panel: en banc
Order Date: 12/16/80
Disposition: AFFIRMED
Mandate Issued: 1/15/81 Bill of Costs: 3/23/81
Record Returned: 1/15/81

• • •

1980

10/25 Filed O&3c Railway Labor Executives' Association's motion to dismiss, in the alternative, to certify the question on this appeal to the United States Supreme Court, svc.

• • •

11/3 Entered order that the motion to dismiss or to certify the question on appeal to the US Supreme Court shall be taken with the case. Counsel for the trustee shall file an additional 21 copies of this motion for dist. to the full court. Further ordered that the motion for

extension of time to respond to motion to dismiss or certify treated as a motion for leave to respond to motion to dismiss is DENIED. The amicus curiae motion suggesting interests that it has in the questions raised by the motion to dismiss, further ordered that the submission of brief by Ogilvie, Trustte [*sic*] of Chi., Mil., St. Paul and Pacific RR Co. in support of appellants and motion to file oversized brief is GRANTED.

11/4 Filed O&3c motion of the trustee and creditors for certain procedural relief., svc. (80-2536)

11/5 Entered order that the court request for extension of time is DENIED. The court further ordered that the request to bar appellant's from filing a reply brief is DENIED. The court also further ordered the request to require appellants to respond is DENIED., [*sic*] The court reaffirms its order 11/3/80 permitting appellant to respond to the motion in its reply brief. Also further ordered that the request for additional time at oral argument is GRANTED to the extent that each side shall have 5 additional min. Also further ordered the request for leave to file an oversized brief is GRANTED to the extent that the turstee [*sic*] may file a brief up to 75 pages. The court also further orders sua sponte, that these 2 appeals are consolidated.

• • •

11/8 Filed O&2c emergency motion by intervenor-appellant Railway Labor Executives' Assoication [*sic*] for a stay of the preliminary injunction pending appeal svc. (80-2536)

• • •

2/20 Filed O&3c emergency motion to stay pending appeal to the Supreme Court., scv. of RP Labor Exec's. [*sic*] (80-2536)

12/19 Filed notice of appeal to Supreme Court of appellant., svc.

12/23 Filed O&3c memo of trustee in opposition to RLEA's motion to stay pending appeal to the Supreme Court., svc.

12/16 Entered order per CR 35 AFFIRMED. (80-2536).

12/16 Entered final judgment order AFFIRMED with costs. (80-2536).

• • •

12/31 Entered order that motion for stay is hereby DENIED but FURTHER ORDERED that if stay of 6/9/80 order is obtained in Supreme Court, this court, on that contingency, hereby grants stay of 10/15/80 order. (80-2536)

• • •

4/30 Entered order from Sup. Ct. noting probable jurisdiction. (80-2536)

• • •

Selected Docket Entries in

7th Cir. No. 80-2536

In re Chicago, Rock Island & Pacific Railroad Co.

Appeals of

United States of America,

the Interstate Commerce Commission,

and Neil Goldschmidt

U.S. COURT OF APPEALS
SEVENTH CIRCUIT

Docket 80-2536

• • •

Summary Of Events

Docketed: 10-30-80
Docket Fee Paid: U.S. Appeal
Appendix: 10/29/80, 11/10/80
Appellant's Brief: 10/29/80
Appellee's Brief: 11/10/80, dist.
Reply Brief: 11/12/80 dist. en banc.
Date of Oral Arg: 11/13/80
Panel: en banc
Order Date: 12/16/80
Disposition: AFFIRMED
Mandate Issued: 1/15/81 Bill of Costs: 3/23/81
Record Returned: 1/15/81

• • •

1/8 Filed appellants' notice of appeal to supreme court. [*sic*]. (80-2487)

• • •

Complaint for Injunctive Relief

filed June 5, 1980

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 75 B 2697

In the Matter of

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, Debtor, WILLIAM M. GIBBONS, as Trustee of the Chicago, Rock Island and Pacific Railroad Company, Debtor; CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Indenture Trustee; THE FIRST NATIONAL BANK OF CHICAGO, as Indenture Trustee; and HENRY CROWN, et al., *Plaintiffs*,

v.

THE UNITED STATES OF AMERICA; THE INTERSTATE COMMERCE COMMISSION; and NEIL GOLDSCHMIDT, United States Secretary of Transportation, *Defendants*.

In Proceedings for the Reorganization of a Railroad

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

This action is brought by the Trustee and Creditors of the estate of the Chicago, Rock Island and Pacific Railroad Company ("the Rock Island"), which is now in liquidation, to enjoin the enforcement of the Rock Island Railroad Transition and Employee Assistance Act ("the Rock Island Act" or "the Act"). The plaintiffs also seek a declaration that the Rock Island Act is unconstitutional under the Fifth and Fourteenth Amendments to the United States Constitution, on the grounds that it imposes a debt on the Rock Island estate which constitutes an uncompensated taking of private property for public purposes, and by that and other provisions violates the plaintiffs' due process and equal protection rights, the constitutional separation of

powers principle, and the principle that laws respecting bankruptcy must be uniform. In support thereof, the plaintiffs, by their attorneys, state as follows:

Jurisdiction and Venue

1. This Court has jurisdiction under Section 77 of the Bankruptcy Act. Jurisdiction also arises under 28 U.S.C. § 1331(a), in that the matter in controversy arises under the Constitution and laws of the United States. This Court also has jurisdiction of this action under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, because the plaintiffs seek a declaration of their rights and further relief concerning an actual controversy otherwise within this Court's jurisdiction.

2. Venue is proper in this District under 28 U.S.C. § 1391(e), in that the causes of action alleged involve the United States and its officers and agents acting in their official capacities. The United States of America and the Interstate Commerce Commission both maintain offices in this District in Chicago, Illinois. The Rock Island maintains its principal place of business in this District, and the Rock Island estate owns real property in this District which would be affected by the actions sought to be enjoined.

3. This action is brought as part of the proceedings for the reorganization of a railroad, *In re Chicago, Rock Island and Pacific Railroad Company*, No. 75 B 2697 ("the reorganization proceedings"), because it relates to property included in these proceedings.

The Parties

4. Plaintiff William M. Gibbons is Trustee of the Chicago, Rock Island and Pacific Railroad Company, Debtor ("the Trustee"). The Rock Island is a railroad which the defendant Interstate Commerce Commission has found to

be cashless, and therefore without further common carrier responsibilities. Pursuant to the order of the Reorganization Court of January 25, 1980, the Rock Island is now in the process of liquidation under the supervision of the Trustee. The Trustee is responsible for the preservation and disposition of the assets of the Rock Island estate pursuant to Section 77 of the Bankruptcy Act and the orders of the Reorganization Court. Under the Rock Island Act, he is charged with the responsibility for negotiation of an agreement implementing its provisions concerning labor protection. Under Section 106 of the Act, he is subject to an order of the bankruptcy court, which must direct implementation of an employee protection arrangement imposed by the defendant Interstate Commerce Commission. Section 110(b) of the Rock Island Act provides that obligations guaranteed by the United States government to implement any employee protection arrangement under it "shall be treated as an administrative expense of the estate of the Rock Island Railroad." The Rock Island Act therefore purports to impose on him new obligations which directly conflict with his existing duties to preserve the assets of the estate and the interests of all of its creditors and shareholders and would impair his ability to carry out these duties.

5. The plaintiffs, Henry Crown, et al., hold substantial blocks of Rock Island common stock, first mortgage bonds, and income debentures. The Crown plaintiffs have been found by the Reorganization Court to have a "substantial interest in the Rock Island." They were permitted to intervene in these proceedings, and have actively participated in all other proceedings relating to the Rock Island estate. The interest of the Crown plaintiffs would be substantially impaired by the imposition of $75,000,000 in priority debt for labor protection costs as contemplated by the Act.

6. Plaintiff First National Bank of Chicago ("the First National Bank") appears as Trustee under the First Mortgage Indenture. The imposition of the $75,000,000 adminis-

trative expense debt contemplated by the Act may substantially impair the interests of holders of first mortgage bonds, whom it represents as Trustee.

7. Continental Illinois National Bank and Trust Company of Chicago ("Continental Bank") appears as Trustee under the Income Debenture Indenture. The imposition of the $75,000,000 priority debt contemplated by the Act would substantially impair the interests of holders of income debentures, whom it represents as Trustee.

8. The defendant Interstate Commerce Commission is the federal agency responsible under the Rock Island Act for imposing a labor protection arrangement upon the estate of the Rock Island in the event that the unions representing former employees of the Rock Island and the Trustee cannot agree on a labor protection arrangement.

9. The defendant United States of America, acting through the Secretary of Transportation, shall guarantee obligations of the Rock Island incurred through the imposition of labor protection charges under the Act. Obligations guaranteed by the United States under the Act would be treated as an administrative expense of the Rock Island estate.

FACTUAL ALLEGATIONS

History of Prior Proceedings

10. The Rock Island filed a petition for reorganization pursuant to Section 77 of the Bankruptcy Act in the District Court for the Northern District of Illinois on March 17, 1975. Despite the protestations of the railroad's creditors, the Reorganization Court found that a successful reorganization was "not clearly impossible," and authorized the Trustee to pursue an income-based reorganization.

11. From March 1975 through January 1980 the Reorganization Court and the Trustee sought to serve the public interest through reorganization rather than liquidation. During the four and one-half year period from January

1975 through June 1979, the Rock Island suffered losses in excess of $157 million, thereby reducing the value of the creditors' security in at least that amount.

12. During the attempted reorganization period, the jobs of Rock Island employees were preserved, at a cost to the Rock Island of almost one billion dollars in wages and benefits and at a cost to the plaintiff creditors and shareholders in excess of $150 million in operating losses.

13. Despite the critical cash position of the Trustee, on August 28, 1979, its employees struck the Rock Island. On September 20, 1979, the President of the United States appointed an Emergency Board pursuant to Section 10 of the Railway Labor Act, thereby mandating a return to work by the Rock Island employees. The employees defied the law and refused to return to work.

14. As a result of this strike, the cash reserves of the Trustee were further depleted. On September 26, 1979, the Interstate Commerce Commission found the Rock Island to be cashless, rendering its continuing operations impossible, and ordered directed service by the Kansas City Terminal Railway Company ("the KCT"), and, thereafter, by other companies, to ensure the continued operation of rail service over Rock Island lines.

15. During this period of subsidized directed service, the jobs of all Rock Island employees were preserved through their employment by directed service carriers without regard to the carriers' need for their services. Their employment during this period was directly subsidized by the federal government at a cost to it of over $70 million dollars.

16. After the period for subsidization of directed service under the statute expired on March 23, 1980, the Interstate Commerce Commission authorized non-subsidized "permissive" directed service to continue over Rock Island lines. Such "permissive" directed service operations over some Rock Island lines continues to the present date.

17. Throughout the period during which service over the Rock Island's lines has been maintained under directed service orders, the value of the Rock Island estate has continued to erode. In particular, the estate has not received adequate compensation for the use of its lines and facilities in the public interest.

18. On January 25, 1980, the Reorganization Court found that there was no longer any possibility of an income-based reorganization of the Rock Island, and ordered the Trustee to commence liquidation of the railroad's properties. Cessation of operations by the Rock Island as a railroad with common carrier responsibilities thus became permanent and complete.

19. As of the date of the Rock Island Act, the Rock Island's obligations as a common carrier had already ceased, and the positions of all but a handful of its former employees had already effectively been eliminated.

20. In its Report to the Reorganization Court Concerning the Proposed Total Abandonment of Rock Island Lines, served May 27, 1980, the defendant Interstate Commerce Commission, the agency charged with administration of the national railway transportation system, recommended that the Court authorize the Trustee "to abandon the entire Rock Island system" and to discontinue service over its lines.

21. On June 2, 1980, after notice and hearing, the Reorganization Court ordered the system-wide abandonment of all Rock Island lines and the discontinuance of all its rail services and obligations as a rail carrier, subject to certain recommendations proposed by the defendant Commission. The Court thus confirmed the prior termination of the common carrier obligation of the Rock Island.

The Rock Island Act

22. The Rock Island Railroad Transition and Employee Assistance Act was signed into law on May 30, 1980. A

copy of the Act is attached as Exhibit A to this complaint and incorporated herein.

23. By its terms, the Act becomes effective immediately upon its enactment. It was signed by the President on May 30, 1980.

24. Section 102 of the Act contains a congressional finding that "uninterrupted continuation of services over Rock Island lines is dependent on adequate employee protection provisions", thus stating the purported public purpose of the Act.

25. Section 106 of the Act establishes and creates a new obligation against the estate for "a fair and equitable arrangement with respect to employee protection." This obligation is cumulative with and in addition to employee protection already available to former Rock Island employees under other statutes and agreements.

26. Section 106 requires the railroad and labor organizations representing its employees to enter into a negotiated agreement within 10 days of the enactment of the legislation, which provides "protection for employees who are adversely affected as a result of a reduction in service by such railroad. Such employee protection may include, but need not be limited to, interim employee assistance, moving expenses, employee relocation incentive compensation, and separation allowances."

27. Section 106(b) requires the imposition of a "fair and equitable" labor protection arrangement by the Interstate Commerce Commission after the 10 day voluntary period has expired. It defines "fair and equitable" as "no less protective of the interests of employees than protection afforded under Section 9 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 908) ["MRRA"] . . . ." This arrangement shall be "imposed" within thirty days of the enactment of the legislation.

28. The employee protective provisions of the MRRA, unlike those in the Rock Island Act, were enacted as part

of a statutory plan and in connection with appropriations for the continued operation of core railroad lines.

29. Section 106(e)(2) of the Act provides as follows:

> Benefits and allowances under such agreement or arrangement entered into under this section shall be paid by the Rock Island Railroad from its own assets or in accordance with section 110 of this title, and claims of employees for such benefits and allowances shall be treated as administrative expenses of the estate of the Rock Island Railroad.

Thus, the liabilities created by the Act are administrative expenses of the estate, in preference to certain outstanding claims of creditors and shareholders.

30. Section 110(d) of the Rock Island Act provides that the total liability of the Rock Island under an employee protection arrangement imposed pursuant to Section 106 "shall not exceed $75,000,000."

31. Section 110 of the Rock Island Act establishes a mechanism by which the Secretary of Transportation "shall guarantee obligations of the Rock Island Railroad" incurred "for purposes of providing employee protection" under Section 106, in a principal amount not to exceed $75,000,000. Under Section 110(b), any obligation guaranteed by the government pursuant to the Act "shall be treated as an administrative expense of the Rock Island Railroad."

32. Section 110(e) of the Act purports to limit the total liability of the United States for obligations incurred by the railroad pursuant to the Act to the guaranteed priority loan under Section 110. Section 110(e) provides as follows:

> Except in connection with obligations guaranteed under this section, the United States shall incur no liability in connection with any employee protection agreement or arrangement entered into under section 106 of this title.

33. In sum, the Rock Island Act creates priority obligations of up to $75,000,000 for new employee protection measures found necessary to meet a public purpose. It imposes upon the estate an involuntary taking or loan in that amount, which is guaranteed by the Secretary of Transportation and which is designated as an administrative expense of the Rock Island estate. That loan would fund an arrangement for payment of labor protection charges imposed by the Act, whether negotiated by the Trustee under Section 106(a) or imposed by the Interstate Commerce Commission under Section 106(b). The Act provides no mechanism for compensation to the Rock Island estate for obligations incurred under the Act, and purports to eliminate other remedies.

34. Other sections of the Act purport to limit the procedural rights of the Trustee and creditors under the Act.

35. Section 106(c) purports to require the bankruptcy court to authorize and direct the Trustee to implement immediately an arrangement imposed under Section 106(b).

36. Section 106(d)(1) purports to prohibit any stay of an order of the Interstate Commerce Commission or the bankruptcy court which imposes an arrangement under Section 106(b), by the Commission, the bankruptcy court or "any other court".

37. Under Sections 106(b) and (c), the employee protective arrangements which impose the priority obligation under the Act will become effective no later than thirty days after its enactment, with no possibility of a stay.

38. Section 106(d)(2) of the Act purports to limit the right of review of orders implementing Section 106(b). That section provides as follows:

> Any order described in paragraph (1) of this subsection may be appealed only to the court of appeals of the United States having jurisdiction to review decisions and orders of the bankruptcy court. Any such

appeal to such court of appeals shall be filed within 5 days after the date of entry of the order of the Commission or the bankruptcy court, as the case may be and such court of appeals shall finally determine such appeal within 60 days after the date such appeal is filed. No determination by the court of appeals under this subsection may be reviewed in any other court.

39. The Act imposes additional restrictions on the Trustee in the disposition and use of Rock Island properties.

40. Section 120(a) of the Rock Island Act provides continued directed carrier service without federal government assistance over Rock Island commuter lines which were in operation on March 1, 1980, for a period of two years after the date of the Act. It provides for compensation for the use of Rock Island lines and facilities on terms determined by the Commission to be reasonable. No provision is made for the consent of the Trustee or the approval of the Reorganization Court.

41. Section 120(b) of the Act prohibits the discontinuance of service over a passenger commuter line during the period of directed service.

42. Section 121 provides for "temporary rail banking," by giving the Secretary of Transportation veto power over the scrapping, downgrading or "other disposal" of any line of the Rock Island during the 180 day period following its enactment. However, it provides that the Secretary shall approve the disposition of such lines unless he finds that there has been a written expression of interest in "purchasing, leasing or rehabilitating the particular rail line or facility for purposes of providing rail service," and that there is a "reasonable expectation that such purchase transaction will be consummated."

43. Section 122 purports to create Commission jurisdiction to authorize "any rail carrier willing to do so volun-

tarily to use the tracks and facilities of the Rock Island Railroad . . ." for an indefinite period, under terms of compensation which the Commission finds to be reasonable.

Additional Factual Allegations

44. Since the inception of the reorganization proceedings described in paragraphs 10 through 17 above, the employees of the Rock Island have received five years of labor protection at a cost to the Rock Island estate of almost one billion dollars in wages and benefits and to its creditors in excess of one hundred and fifty million dollars in losses, and at a cost to the federal government in excess of seventy million dollars in directed service subsidies.

45. Employees necessary to the operation of railroad lines over which directed service has been provided by other rail carriers are adequately protected through continued employment by those carriers, and by preferential consideration for other positions on other lines of the interim operating carriers and purchasing carriers. This protection is contractually assured under the terms of a document known as the "Miami Accords," which was executed on March 4, 1980, by the representatives of labor organizations representing former Rock Island employees and interim and directed service carriers.

46. Employees not protected under the Miami Accords are adequately protected under existing statutory provisions, which include the Railway Unemployment Insurance Act, 45 U.S.C. § 351 *et seq.* and the Railway Retirement Act of 1974, 45 U.S.C. § 231 *et seq.* These statutes provide unemployment compensation and other employment protection benefits at a higher level and for longer duration than are available to ordinary workers under most state unemployment insurance plans.

47. The Rock Island Railroad has contributed to funds available for employee protection under these and other

statutory plans. *See* 45 U.S.C. § 358. At no time were these contributions to existing statutory employment protection accounts withheld or deferred, so long as the Rock Island's common carrier obligations remained in existence. At no time have benefits otherwise payable under these statutes been withheld or deferred.

48. In addition to existing statutory employment protection, former Rock Island employees may be protected under a variety of union and private contractual labor protection programs.

49. The former employees of the Rock Island are thus protected without the additional protection made available to them under the Rock Island Act.

50. In its Report to the Reorganization Court Concerning the Proposed Total Abandonment of Rock Island Lines, served May 27, 1980, the defendant Interstate Commerce Commission recommended complete abandonment of Rock Island lines. However, it did not recommend the imposition of any labor protection conditions in connection with its approval of total line abandonment. Rather, the Commission specifically declined to recommend the imposition of employee protective conditions equal to or greater than those provided in *New York Dock Railway Control—Brooklyn Eastern District*, 360 I.C.C. 60 (1970). The Commission pointed out its past practice of refusal to order the imposition of employee protective conditions in entire rail system abandonments.

51. On June 2, 1980, the Reorganization Court ordered the system-wide abandonment of all Rock Island lines. However, the Court found that the imposition of labor protective conditions in connection with the system-wide abandonment was unwarranted under existing law, on the basis of case precedent, and the constitutional and equitable rights of the parties, and specifically directed the Trustee not to pay any employee labor protection or to borrow for that purpose.

52. During the period of reorganization, dividend payments and redemption of the creditors' interests in outstanding Rock Island securities have been suspended and deferred.

53. As of the present date, the assets of the Rock Island, with the imposition of labor protection claims contemplated by the Act, would be clearly insufficient to meet its debt and equity obligations.

54. The employee protection provisions of the Rock Island Act and the other limitations on the disposition of the assets of the Rock Island estate imposed by the Act, confer no benefit upon the Rock Island estate or its creditors, and relieve them of no existing obligation.

55. The imposition of further labor protection costs as an administrative expense against the assets of the estate would result in further impairment of the debt and equity rights of the plaintiff creditors and shareholders.

Count I

(Unconstitutional Taking and Due Process)

56. Plaintiffs reallege and incorporate paragraphs 1 through 55 as paragraph 56 of Count I of this complaint.

57. In this Count, the plaintiffs seek a declaratory judgment, as provided in the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, that the Rock Island Act is unconstitutional, because it violates the prohibition contained in the Fifth Amendment to the United States Constitution against uncompensated takings of private property for public use, and deprives the plaintiffs of their property without due process of law.

58. An actual controversy which is justiciable in character exists between the plaintiffs and the defendants, as to whether the defendants Interstate Commerce Commission and the Secretary of Transportation may impose prior obli-

gations for the cost of labor protection up to the amount of $75,000,000 upon the Rock Island estate, as set forth in paragraphs 22 through 33 of this Complaint, consistent with the Fifth Amendment's prohibition against uncompensated takings of private property for public use.

59. The imposition of the obligations and debt provided under the Act would impair the plaintiffs' rights and security in the assets of the Rock Island estate, and impose upon the Trustee duties which conflict with his existing responsibility to preserve the assets of the estate.

60. A declaratory judgment as to the constitutionality of the Act's provisions would resolve the controversy between the parties as to the authority of the Commission and the Secretary to impose new costs of labor protection as provided in the Act.

Count II

(Unconstitutional Taking, Due Process and Equal Protection)

61. The plaintiffs reallege and incorporate paragraphs 1 through 55 as paragraph 61 of Count II.

62. This Count alleges an unconstitutional taking of the property of the Rock Island estate and violation of the plaintiffs' due process and equal protection rights in section 110(e) of the Act, which is described and set forth in paragraph 28. That section purports to specifically limit the liability of the United States to the loan guarantees provided for in section 110. It thereby purports to eliminate the remedy otherwise available for claims against the United States under the Tucker Act, 28 U.S.C. § 1491 *et seq.* The elimination of this right would destroy the plaintiffs' ability to seek compensation for the taking of their property for public use, as set forth in Count I above, and thereby further violate their equal protection and due process rights.

63. By imposing a borrowing obligation of $75 million and related administrative expense upon the assets of the Rock Island estate without conferring any benefit upon the estate or providing any mechanism for compensation to the estate, the Act violates the constitutionally protected property rights of creditors and constitutes a further unconstitutional taking.

64. The plaintiffs seek a further declaration as provided in 28 U.S.C. § 2201, that Section 110(e) of the Rock Island Act, read in light of its other provisions, is unconstitutional under the Fifth and Fourteenth Amendments to the United States Constitution.

Count III

(Unconstitutional Taking)

65. Plaintiffs reallege and incorporate paragraphs 1 through 55 as paragraph 65 of Count III of this complaint.

66. In this Count, the plaintiffs seek a further declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, as to the constitutionality of the provisions of the Act which purport to limit their remedies and rights of review under the Act.

67. In this Count, the Plaintiffs seek a further declaratory judgment under 28 U.S.C. §§ 2201 and 2202. Specifically, and in light of the findings of cashlessness, impossibility of reorganization and entitlement to abandonment by the Reorganization Court and the Commission, as set forth in paragraphs 14, and 18 through 21, *supra*, the plaintiffs urge that the Act's provisions which permit continued operation over the Rock Island's lines by other carriers, without the consent or approval of the Trustee and without regard to the rights of creditors, and which otherwise limit the Trustee's right to dispose of the railroad's property, constitute an unconstitutional uncompensated taking of the railroad's property for public purposes, and a deprivation

of the property of the Rock Island estate without due process of law.

Count IV

(Due Process and Equal Protection)

68. Plaintiffs reallege and incorporate paragraphs 1 through 55 as paragraph 68 of Count IV of this complaint.

69. Specifically, the plaintiffs maintain that the provisions described in paragraphs 26 through 37 which require the automatic implementation of an employee protection plan imposed by the Interstate Commerce Commission under section 106(b) of the Act within thirty days, combined with the prohibition of a stay of the Commission's order by the Commission, the bankruptcy court, or any other court, makes a violation of the plaintiff's procedural due process and equal protection rights unavoidable because of the unreasonably short time period established for final, unstayable action affecting the property of the estate.

70. The plaintiffs further maintain that the provision described in paragraph 38, *supra*, which purports to eliminate judicial review of orders of the Commission or bankruptcy court under section 106(b) except for appeals taken within five days to the court of appeals having jurisdiction to review orders of the bankruptcy court, violates their right to due process and equal protection of the laws, under the Fifth and Fourteenth Amendments, in that it deprives them of judicial review of constitutional issues which is available to other citizens. No adequate justification exists for this arbitrary discrimination.

Count V

(Separation of Powers and Equal Protection)

71. The plaintiffs reallege and incorporate paragraphs 1 through 55, *supra*, as paragraph 71 of Count V of their complaint.

72. The provision described in paragraph 38, *supra*, infringes the concept of separation of powers upon which the Constitution is based, in that it purports to deprive the Supreme Court of power to decide the constitutionality of Congressional action.

73. The provision described in paragraph 38, *supra*, which purports to deprive the Supreme Court of jurisdiction to review the constitutionality of the Act, further deprives the plaintiffs of due process and equal protection of the laws, because it would deprive them of judicial review which is available to others. *See* 28 U.S.C. § 2284.

74. The provision described in paragraph 35, *supra*, which purports to require this Court to enforce an order of the Interstate Commerce Commission, no matter how unreasonable or constitutionally deficient, and to deprive this Court of the power to review or reconsider that order, violates the constitutional principle of separation of powers, in that it purports to deprive this Court or any court of inherently judicial powers, by transferring the jurisdiction to determine whether a debt should be imposed upon a debtor's estate to an administrative agency, and by infringing upon the Reorganization Court's judicial discretion and full jurisdiction over a pending proceeding. This defect is aggravated by the prohibition of judicial stay of any Commission order which is contained in the Act, as described in paragraph 37, *supra*.

75. The plaintiffs seek a further declaratory judgment, under 28 U.S.C. §§ 2201 and 2202 that the provisions described in this Count violate the constitutional principles of separation of powers and equal protection as herein stated.

Count VI

(Enactment of a Bankruptcy Law That is Not Uniform)

76. The plaintiffs reallege and incorporate paragraphs 1 through 55 as paragraph 76 of Count VI of this Complaint.

77. Article I, section 8 of the Constitution provides that Congress shall have the power "[t]o establish . . . uniform Laws on the subject of Bankruptcy throughout the United States."

78. Sections 106 and 110 of the Rock Island Act, as described in paragraphs 25 through 38, *supra*, violate the requirement of Article I, section 8, that laws concerning bankruptcy must be uniform, and the plaintiffs' right to equal protection of the laws, by imposing labor protection obligations and debts as an administrative expense upon the estate of the Rock Island, which are higher than and different from those imposed on other bankrupt estates.

79. The plaintiffs seek a further declaration by this Court, under 28 U.S.C. §§ 2201 and 2202, that the provisions of the Rock Island Act described in this Count violate the requirement of Article I, section 8 of the Constitution, that laws in bankruptcy must be uniform.

Count VII

(Injunctive Relief)

80. The plaintiffs reallege and incorporate paragraphs 1 through 79 as paragraph 80 of Count VII.

81. This Count seeks temporary and permanent injunctive relief which is necessary to enforce declaratory judgments as to the issues set forth in Counts I through III, as provided under 28 U.S.C. § 2202. Specifically, the plaintiffs request the Court to enjoin the defendant Interstate Commerce Commission from imposing labor protection obligations, and the defendant Secretary of Transportation from imposing or guaranteeing any loans, pursuant to the Rock Island Act, until final determination of the Act's constitutionality.

82. Injunctive relief is necessary to prevent immediate and irreparable harm to the plaintiff's property and con-

stitutional rights. Specifically, under section 106 of the Act, as set forth in paragraphs 33 through 38, *supra*, if the labor organization representatives and the Trustee are unable to agree on labor protection terms within ten days of the Act's enactment, the I.C.C. "shall impose" labor protection obligations of up to $75,000,000 on the estate as an administrative expense, within thirty days of its enactment. Section 110 of the Act further provides that payment of obligations imposed by the Commission under the Act would be funded by a priority loan guaranteed by the Secretary of Transportation.

83. If the defendants Commission and Secretary are not enjoined from imposing labor protection orders, charges and administrative expenses upon the estate pursuant to the Act, labor protection obligations and charges will be imposed upon the Rock Island estate within thirty days of the enactment of the Act. As described in paragraph 36 of this Complaint, an order of the defendant Commission imposing such obligations, or an order of the bankruptcy court implementing such an order, may not be stayed in any court.

84. Implementation of such an order would cause plaintiffs injury, in that it would be a taking of the property of the Rock Island estate without just compensation, in violation of their Fifth Amendment rights.

85. The imposition of such an obligation or order would cause the plaintiffs further irreparable injury in that the monies paid under it would be paid to individual employees and would be recoverable only by a multiplicity of lawsuits, if at all.

86. The harm imposed by the Act would further be irreparable because the Act purports to limit the liability of the United States to the administrative expense loan imposed by the statute, as described in paragraph 32, *supra*. An order of the Commission imposing labor protection obligations would thus become effective immediately upon

its issuance, which could occur as of June 9, 1980, and under the terms of the Act no stay of such an order could then be issued by any Court. The harm suffered by the plaintiffs due to a Commission order would thus be irreparable upon issuance of the order, because the plaintiffs' right to review prior to its implementation is severely limited under the statute.

Prayer for Relief

Wherefore, the plaintiffs, William Gibbons, First National Bank, Continental Bank, and Henry Crown, et al., respectfully pray that this Court grant them relief as follows:

A. Declare the Rock Island Transition and Employee Assistance Act to be unlawful and unconstitutional on the ground that it violates the Fifth Amendment of the United States Constitution because it mandates an unconstitutional taking of the property of the Rock Island estate for public purposes without just compensation.

B. Declare the Rock Island Employee Assistance Act unconstitutional insofar as it violates the due process clause of the Fifth Amendment and the equal protection provisions of the Fifth and Fourteenth Amendments, and the Constitutional doctrine of separation of powers.

C. Issue a preliminary and permanent injunction, enjoining the defendant I.C.C. from entering an order under the authority granted to it by the Act, imposing labor protection on the estate of the Rock Island, and

enjoining the defendant and Secretary of Transportation from imposing a loan to fund any labor protection provision under the Act.

D. Award plaintiffs their costs and attorneys fees.

E. Grant such further relief as the Court deems just and appropriate.

Respectfully submitted,

Of counsel:

By /s/ NICHOLAS G. MANOS
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June 5, 1980.

(Certificate of service omitted in printing.)

Appendix B

to June 20, 1980 Memorandum of RLEA

(Statistical Information)

UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 Rush Street
Chicago, Illinois 60611

June 18, 1980

Mr. John O'B. Clark, Jr.
Highsaw, Mahoney & Friedman
Suite 210
1050 Seventeenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Clark:

Enclosed herewith is the information in the possession of the Board that you requested as to the statistical breakdown of years of service of Chicago, Rock Island and Pacific Railroad employees.

The information contained in the accompanying document numbering 22 pages was derived from information reported to the Railroad Retirement Board by the Chicago, Rock Island and Pacific Railroad for the year 1978. The information was compiled and maintained in the normal and routine course of the Board's official duty.

As Secretary of the Board, the undersigned has custody of enclosed material and has affixed the seal of the Board thereto in certification that it is a true and accurate copy of records in the Board's possession.

Very truly yours,

/s/ R. F. BUTLER
FOR THE BOARD
R. F. Butler, Secretary

Enclosures

1978 WAGE STUDY

AGE GRP.	YRS. SER.	NUMBER	AGGREGATE CURR YEAR SERV MONS	AGGREGATE CURR YEAR RRA COMP	AGGREGATE CURR YEAR RUIA COMP	CONTINUING SERVICE EMPLOYEES
< 20	< 1	138	435	408374	163478	27
	1	18	181	212919	71093	18
Total		156	616	621293	234571	45

Certified to be a true and accurate copy.

TABLE R-15

PAGE 1

RE-ENTS	- NEW ENTRANTS - NUMBER	QUAL RUIA	MEN	WOMEN	EMPLOYEES WITH 354 SERV MONS	NUMBER WITH MAX RRA	ELIGI-BILITY
0	111	20	135	3	0	3	39
0	0	0	17	1	0	0	18
0	111	20	152	4	0	3	57

/s/ R. F. BUTLER
R. F. Butler
Secretary of the Board

AGE GRP.	YRS. SER.	NUMBER	AGGREGATE CURR YEAR SERV MONS	AGGREGATE CURR YEAR RRA COMP	AGGREGATE CURR YEAR RUIA COMP	CONTINUING SERVICE EMPLOYEES
20-24	< 1	573	1,981	1828913	727253	87
	1	245	1,977	2212455	768424	234
	2	105	984	1183374	386026	100
	3	68	658	787972	255611	67
	4	72	822	1031111	325028	72
	5	50	564	706312	221153	50
	6	15	173	225728	69600	15
Total		1128	7,159	7975865	2753095	625

TABLE R-15

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RE-ENTS	- NEW ENTRANTS - NUMBER	QUAL RUIA	MEN	WOMEN	EMPLOYEES WITH 354 SERV MONS	NUMBER WITH MAX RRA	ELIGI-BILITY
24	462	127	553	20	0	8	175
10	1	1	236	9	0	2	228
5	0	0	102	3	0	2	98
1	0	0	65	3	0	3	61
0	0	0	69	3	0	1	71
0	0	0	47	3	0	3	48
0	0	0	15	0	0	2	15
40	463	128	1087	41	0	21	696

1978 WAGE STUDY

AGE GRP.	YRS. SER.	NUMBER	AGGREGATE CURR YEAR SERV MONS	AGGREGATE CURR YEAR RRA COMP	AGGREGATE CURR YEAR RUIA COMP	CONTINUING SERVICE EMPLOYEES
25-29	< 1	383	1,452	1436985	544392	33
	1	146	1,220	1386850	475011	128
	2	91	814	983195	318089	80
	3	68	619	764093	241790	67
	4	102	1,032	1275583	404439	101
	5	146	1,542	2006750	608690	139
	6	118	1,351	1751970	536766	118
	7	129	1,440	1859112	567669	128
	8	122	1,364	1802504	543689	122
	9	95	1,087	1441115	431672	95
	10-14	71	839	1151695	334802	71
Total		1471	12,760	15859852	5007009	1,082

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PAGE 3

RE-ENTS	- NEW ENTRANTS - NUMBER	QUAL RUIA	MEN	WOMEN	EMPLOYEES WITH 354 SERV MONS	NUMBER WITH MAX RRA	ELIGI-BILITY
45	305	106	355	28	0	7	147
17	1	1	140	6	0	4	128
11	0	0	85	6	0	5	83
1	0	0	67	1	0	0	60
1	0	0	92	10	0	5	97
7	0	0	142	4	0	17	136
0	0	0	115	3	0	15	117
1	0	0	120	9	0	14	125
0	0	0	108	14	0	14	119
0	0	0	87	8	0	11	94
0	0	0	63	8	0	13	71
83	306	107	1374	97	0	105	1,177

1978 WAGE STUDY

AGE GRP.	YRS. SER.	NUMBER	AGGREGATE CURR YEAR SERV MONS	AGGREGATE CURR YEAR RRA COMP	AGGREGATE CURR YEAR RUIA COMP	CONTINUING SERVICE EMPLOYEES
30-34	< 1	192	692	689007	257517	9
	1	52	422	466656	162821	45
	2	32	266	311120	104251	28
	3	39	347	419198	135612	33
	4	50	493	596878	191514	46
	5	56	610	771600	240703	55
	6	68	721	938908	286175	65
	7	89	965	1230689	381304	88
	8	128	1,411	1848516	559345	128
	9	145	1,680	2219829	668009	144
	10-14	496	5,702	7780434	2267985	496
	15-19	40	456	623072	181539	40
Total		1387	13,765	17895907	5436775	1,177

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RE-ENTS	- NEW ENTRANTS - NUMBER	QUAL RUIA	MEN	WOMEN	EMPLOYEES WITH 354 SERV MONS	NUMBER WITH MAX RRA	ELIGI-BILITY
33	150	50	182	10	0	2	67
7	0	0	46	6	0	3	43
4	0	0	27	5	0	1	29
6	0	0	36	3	0	4	35
4	0	0	45	5	0	2	44
1	0	0	50	6	0	4	55
3	0	0	63	5	0	10	64
1	0	0	79	10	0	8	86
0	0	0	119	9	0	17	123
1	0	0	131	14	0	21	142
0	0	0	461	35	0	94	489
0	0	0	35	5	0	7	39
60	150	50	1274	113	0	173	1,216

1978 WAGE STUDY

AGE GRP.	YRS. SER.	NUMBER	AGGREGATE CURR YEAR SERV MONS	AGGREGATE CURR YEAR RRA COMP	AGGREGATE CURR YEAR RUIA COMP	CONTINUING SERVICE EMPLOYEES
35-39	< 1	75	278	275920	103458	6
	1	33	275	323757	107284	29
	2	23	193	237383	75801	21
	3	13	113	133230	43393	11
	4	24	237	298324	94510	23
	5	28	267	344996	104760	24
	6	27	269	345589	106620	23
	7	43	428	550073	169986	42
	8	50	548	692462	216589	48
	9	63	715	932617	284074	63
	10-14	369	4,205	5702276	1670652	364
	15-19	374	4,390	6152180	1750919	372
	20-24	46	547	775478	218406	46
Total		1168	12,465	16764285	4946452	1,072

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RE-ENTS	- NEW ENTRANTS - NUMBER	QUAL RUIA	MEN	WOMEN	EMPLOYEES WITH 3&4 SERV MONS	NUMBER WITH MAX RRA	ELIGI-BILITY
5	64	22	65	10	0	2	29
4	0	0	30	3	0	1	28
2	0	0	22	1	0	2	21
2	0	0	12	1	0	0	11
1	0	0	21	3	0	0	23
4	0	0	26	2	0	7	24
4	0	0	27	0	0	2	26
1	0	0	37	6	0	1	39
2	0	0	41	9	0	5	50
0	0	0	56	7	0	6	61
5	0	0	348	21	0	68	361
2	0	0	367	7	0	122	370
0	0	0	46	0	0	22	46
32	64	22	1098	70	0	238	1,089

1978 WAGE STUDY

AGE GRP.	YRS. SER.	NUMBER	AGGREGATE CURR YEAR SERV MONS	AGGREGATE CURR YEAR RRA COMP	AGGREGATE CURR YEAR RUIA COMP	CONTINUING SERVICE EMPLOYEES
40-44	< 1	41	130	131632	48049	6
	1	14	123	143797	48666	11
	2	16	135	148446	51066	14
	3	17	161	199404	63438	17
	4	9	91	108500	34804	9
	5	17	155	185936	60703	14
	6	17	166	207101	64399	17
	7	18	180	230831	70518	18
	8	22	229	292216	90003	22
	9	29	316	406862	125423	28
	10-14	141	1,556	2064704	617909	140
	15-19	314	3,589	4942761	1428415	313
	20-24	450	5,279	7409681	2103547	447
	25-29	65	780	1102396	311616	65
Total		1170	12,890	17574267	5118556	1,121

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RE-ENTS	- NEW ENTRANTS - NUMBER	QUAL BUIA	MEN	WOMEN	EMPLOYEES WITH 864 SERV MONS	NUMBER WITH MAX RRA	ELIGI-BILITY
5	30	6	37	4	0	0	10
2	1	1	13	1	0	0	13
2	0	0	12	4	0	0	13
0	0	0	13	4	0	1	15
0	0	0	7	2	0	2	9
3	0	0	16	1	0	1	16
0	0	0	14	3	0	2	15
0	0	0	17	1	0	2	16
0	0	0	21	1	0	4	22
1	0	0	25	4	0	2	29
1	0	0	128	13	0	22	138
1	0	0	305	9	0	90	307
3	0	0	432	18	0	144	449
0	0	0	59	6	0	26	65
18	31	7	1099	71	0	296	1,117

1978 WAGE STUDY

AGE GRP.	YRS. SER.	NUMBER	AGGREGATE CURR YEAR SERV MONS	AGGREGATE CURR YEAR RRA COMP	AGGREGATE CURR YEAR RUIA COMP	CONTINUING SERVICE EMPLOYEES
45-49	< 1	16	66	64977	24758	2
	1	6	39	47582	15233	5
	2	8	71	81186	26991	8
	3	10	81	91026	31215	9
	4	10	93	107800	35948	9
	5	7	62	72574	24595	7
	6	14	149	184536	59248	14
	7	13	142	169981	56429	13
	8	18	176	215129	69029	18
	9	19	194	234805	76109	19
	10-14	88	1,006	1312284	400992	87
	15-19	115	1,301	1759689	517361	115
	20-24	367	4,252	5893577	1693243	366
	25-29	352	4,153	5799779	1657414	352
	30+	32	384	538184	153280	32
Total		1075	12,169	16573109	4841845	1,056

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RE-ENTS	- NEW ENTRANTS - NUMBER	QUAL RULA	MEN	WOMEN	EMPLOYEES WITH 864 SERV MONS	NUMBER WITH MAX RRA	ELIGI-BILITY
3	11	5	13	3	0	0	9
1	0	0	6	0	0	0	4
0	0	0	8	0	0	1	6
1	0	0	9	1	0	2	9
1	0	0	9	1	0	1	10
0	0	0	6	1	0	0	7
0	0	0	14	0	0	0	14
0	0	0	11	2	0	1	12
0	0	0	17	1	0	2	18
0	0	0	15	4	0	0	18
1	0	0	77	11	0	11	88
0	0	0	104	11	0	19	115
1	0	0	355	12	0	120	362
0	0	0	330	22	13	115	350
0	0	0	26	6	32	16	32
8	11	5	1000	75	45	288	1,054

1978 WAGE STUDY

AGE GRP.	YRS. SER.	NUMBER	AGGREGATE CURR YEAR SERV MONS	AGGREGATE CURR YEAR RRA COMP	AGGREGATE CURR YEAR RUIA COMP	CONTINUING SERVICE EMPLOYEES
50-54	< 1	5	15	15694	5675	0
	1	5	29	32235	11122	4
	2	2	19	24160	7428	2
	3	5	51	65719	20104	5
	4	9	67	70467	26099	7
	5	7	69	71863	26707	7
	6	6	67	82397	26481	6
	7	13	138	152742	53842	13
	8	12	95	100578	37665	12
	9	11	113	135195	44247	11
	10-14	71	790	1008035	314295	71
	15-19	89	961	1250482	382724	86
	20-24	182	2,095	2831926	831970	182
	25-29	453	5,230	7233847	2085095	453
	30+	474	5,495	7687879	2188789	474
Total		1344	15,234	20763219	6062243	1,333

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RE-ENTS	- NEW ENTRANTS - NUMBER	QUAL RUIA	MEN	WOMEN	EMPLOYEES WITH 354 SERV MONS	NUMBER WITH MAX RRA	ELIGI-BILITY
3	2	0	5	0	0	1	2
1	0	0	5	0	0	1	4
0	0	0	2	0	0	0	2
0	0	0	5	0	0	1	5
2	0	0	7	2	0	0	6
0	0	0	5	2	0	0	7
0	0	0	4	2	0	0	6
0	0	0	11	2	0	0	13
0	0	0	11	1	0	1	11
0	0	0	9	2	0	1	11
0	0	0	57	14	0	3	69
3	0	0	74	15	0	13	86
0	0	0	170	12	0	37	179
0	0	0	443	10	54	142	446
0	0	0	449	25	474	176	473
9	2	0	1257	87	528	376	1,320

1978 WAGE STUDY

AGE GRP.	YRS. SER.	NUMBER	AGGREGATE CURR YEAR SERV MONS	AGGREGATE CURR YEAR RRA COMP	AGGREGATE CURR YEAR RUIA COMP	CONTINUING SERVICE EMPLOYEES
55	2	1	12	14074	4800	1
	5	1	2	1182	787	0
	6	1	7	6689	2657	1
	7	1	12	13259	4800	1
	8	1	12	13008	4800	1
	9	3	36	46001	14400	3
	10-14	11	126	153531	49272	10
	15-19	5	59	76459	23383	5
	20-24	26	287	381092	114557	26
	25-29	68	757	1022247	301312	68
	30+	111	1,270	1774512	506247	110
Total		229	2,580	3502054	1027015	226

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RE-ENTS	- NEW ENTRANTS - NUMBER	QUAL RUIA	MEN	WOMEN	EMPLOYEES WITH 354 SERV MONS	NUMBER WITH MAX RRA	ELIGI-BILITY
0	0	0	0	1	0	0	1
1	0	0	1	0	0	0	0
0	0	0	1	0	0	0	1
0	0	0	1	0	0	0	1
0	0	0	1	0	0	0	1
0	0	0	2	1	0	0	3
1	0	0	5	6	0	1	11
0	0	0	5	0	0	0	5
0	0	0	24	2	0	5	26
0	0	0	65	3	7	16	65
1	0	0	103	8	111	40	110
3	0	0	208	21	118	62	224

1978 WAGE STUDY

AGE GRP.	YRS. SER.	NUMBER	AGGREGATE CURR YEAR SERV MONS	AGGREGATE CURR YEAR RRA COMP	AGGREGATE CURR YEAR RUIA COMP	CONTINUING SERVICE EMPLOYEES
56	3	1	12	13345	4708	1
	7	1	5	5176	2000	1
	8	1	12	14959	4800	1
	9	1	9	12611	3600	1
	10-14	10	97	120553	38032	10
	15-19	14	168	228212	67200	14
	20-24	19	219	293573	87082	19
	25-29	40	461	625274	183139	40
	30+	124	1,428	1930031	567429	124
Total		211	2,411	3243734	957990	211

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RE-ENTS	- NEW ENTRANTS - NUMBER	QUAL RUIA	MEN	WOMEN	EMPLOYEES WITH 364 SERV MONS	NUMBER WITH MAX RRA	ELIGI-BILITY
0	0	0	1	0	0	0	1
0	0	0	1	0	0	0	1
0	0	0	0	1	0	0	1
0	0	0	1	0	0	0	1
0	0	0	8	2	0	0	9
0	0	0	10	4	0	0	14
0	0	0	18	1	0	5	19
0	0	0	36	4	6	7	40
0	0	0	116	8	124	31	123
0	0	0	191	20	130	43	209

1978 WAGE STUDY

AGE GRP.	YRS. SER.	NUMBER	AGGREGATE CURR YEAR SERV MONS	AGGREGATE CURR YEAR RRA COMP	AGGREGATE CURR YEAR RUIA COMP	CONTINUING SERVICE EMPLOYEES
57	2	1	2	746	555	0
	5	1	1	286	286	0
	7	1	12	15056	4800	1
	8	1	7	6783	2764	1
	9	1	12	14848	4800	1
	10-14	9	101	123224	39618	9
	15-19	9	97	118009	38640	9
	20-24	19	213	284708	84995	19
	25-29	56	650	869004	257650	56
	30+	139	1,607	2224897	640508	139
Total		237	2,702	3657561	1074616	235

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RE-ENTS	- NEW ENTRANTS - NUMBER	QUAL RUIA	MEN	WOMEN	EMPLOYEES WITH 864 SERV MONS	NUMBER WITH MAX RRA	ELIGI-BILITY
1	0	0	1	0	0	0	0
1	0	0	1	0	0	0	0
0	0	0	0	1	0	0	1
0	0	0	1	0	0	0	1
0	0	0	0	1	0	0	1
0	0	0	6	3	0	1	9
0	0	0	6	3	0	0	8
0	0	0	19	0	0	3	19
0	0	0	52	4	10	12	55
0	0	0	132	7	139	37	138
2	0	0	218	19	149	53	232

1978 WAGE STUDY

AGE GRP.	YRS. SER.	NUMBER	AGGREGATE CURR YEAR SERV MONS	AGGREGATE CURR YEAR RRA COMP	AGGREGATE CURR YEAR RUIA COMP	CONTINUING SERVICE EMPLOYEES
58	4	1	12	14371	4800	1
	7	3	30	36437	11746	3
	8	1	12	16087	4800	1
	9	3	36	47910	14400	3
	10-14	9	96	120484	38363	8
	15-19	4	43	57838	17169	4
	20-24	25	284	370713	113153	25
	25-29	48	567	759652	225770	48
	30+	154	1,763	2441017	701227	153
Total		248	2,843	3864509	1131428	246

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RE-ENTS	- NEW ENTRANTS - NUMBER	QUAL RUIA	MEN	WOMEN	EMPLOYEES WITH 864 SERV MONS	NUMBER WITH MAX RRA	ELIGI-BILITY
0	0	0	0	1	0	0	1
0	0	0	3	0	0	0	3
0	0	0	1	0	0	0	1
0	0	0	2	1	0	0	3
1	0	0	8	1	0	0	9
0	0	0	3	1	0	0	4
0	0	0	23	2	0	1	25
0	0	0	44	4	4	8	48
1	0	0	149	5	154	52	153
2	0	0	233	15	158	61	247

1978 WAGE STUDY

AGE GRP.	YRS. SER.	NUMBER	AGGREGATE CURR YEAR SERV MONS	AGGREGATE CURR YEAR RRA COMP	AGGREGATE CURR YEAR RUIA COMP	CONTINUING SERVICE EMPLOYEES
59	< 1	2	8	10053	3150	0
	3	1	8	4995	2454	1
	9	4	45	54929	17337	4
	10-14	6	59	69960	23261	5
	15-19	11	110	129950	43819	11
	20-24	20	232	300228	92474	20
	25-29	59	676	913221	269529	59
	30+	138	1,575	2142416	626176	138
Total		241	2,713	3625752	1078200	238

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RE-ENTS	- NEW ENTRANTS - NUMBER	QUAL RUIA	MEN	WOMEN	EMPLOYEES WITH 864 SERV MONS	NUMBER WITH MAX RRA	ELIGI-BILITY
0	2	1	2	0	0	0	1
0	0	0	0	1	0	0	1
0	0	0	4	0	0	0	4
1	0	0	5	1	0	0	6
0	0	0	5	6	0	0	10
0	0	0	17	3	0	2	20
0	0	0	54	5	8	10	58
0	0	0	129	9	138	37	137
1	2	1	216	25	146	49	237

1978 WAGE STUDY

AGE GRP.	YRS. SER.	NUMBER	AGGREGATE CURR YEAR SERV MONS	AGGREGATE CURR YEAR RRA COMP	AGGREGATE CURR YEAR RUIA COMP	CONTINUING SERVICE EMPLOYEES
60	< 1	1	2	1600	800	0
	2	1	9	9439	3417	1
	3	1	12	14917	4800	1
	4	1	2	1469	555	1
	7	1	12	16466	4800	1
	9	1	1	776	400	1
	10-14	3	36	49965	14400	3
	15-19	8	74	95312	28948	8
	20-24	15	146	184195	58306	14
	25-29	29	335	446754	133609	29
	30+	131	1,279	1756628	506921	131
Total		192	1,908	2577521	756956	190

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RE-ENTS	- NEW ENTRANTS - NUMBER	QUALRUIA	MEN	WOMEN	EMPLOYEES WITH 864 SERV MONS	NUMBER WITH MAX RRA	ELIGI-BILITY
1	0	0	1	0	0	0	0
0	0	0	1	0	0	0	1
0	0	0	1	0	0	0	1
0	0	0	1	0	0	0	0
0	0	0	1	0	0	0	1
0	0	0	1	0	0	0	0
0	0	0	3	0	0	0	3
0	0	0	6	2	0	0	7
1	0	0	13	2	0	1	14
0	0	0	27	2	6	5	29
0	0	0	123	8	131	38	118
2	0	0	178	14	137	44	174

1978 WAGE STUDY

AGE GRP.	YRS. SER.	NUMBER	AGGREGATE CURR YEAR SERV MONS	AGGREGATE CURR YEAR RRA COMP	AGGREGATE CURR YEAR RUIA COMP	CONTINUING SERVICE EMPLOYEES
61	9	3	31	32683	11109	3
	10-14	3	31	37090	12400	3
	15-19	6	70	86877	27599	6
	20-24	10	120	155448	47910	10
	25-29	24	243	296489	92436	24
	30+	91	853	1163489	337904	91
Total		137	1,348	1772076	529358	137

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RE-ENTS	- NEW ENTRANTS - NUMBER	QUAL RUIA	MEN	WOMEN	EMPLOYEES WITH 354 SERV MONS	NUMBER WITH MAX RRA	ELIGI-BILITY
0	0	0	2	1	0	0	3
0	0	0	3	0	0	0	3
0	0	0	4	2	0	0	6
0	0	0	9	1	0	0	10
0	0	0	21	3	4	5	21
0	0	0	90	1	91	25	82
0	0	0	129	8	95	30	125

1978 WAGE STUDY

AGE GRP.	YRS. SER.	NUMBER	AGGREGATE CURR YEAR SERV MONS	AGGREGATE CURR YEAR RRA COMP	AGGREGATE CURR YEAR RUIA COMP	CONTINUING SERVICE EMPLOYEES
62	7	1	10	13470	4000	1
	8	1	10	6086	2577	1
	9	2	13	14411	5054	2
	10-14	2	24	28108	9600	2
	15-19	4	45	52960	17511	4
	20-24	13	131	164439	52106	13
	25-29	28	284	385483	113299	28
	30+	69	634	866165	250698	69
Total		120	1,151	1531122	454845	120

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RE-ENTS	- NEW ENTRANTS - NUMBER	QUAL RUIA	MEN	WOMEN	EMPLOYEES WITH 354 SERV MONS	NUMBER WITH MAX RRA	ELIGI-BILITY
0	0	0	1	0	0	0	1
0	0	0	0	1	0	0	1
0	0	0	2	0	0	0	2
0	0	0	2	0	0	0	2
0	0	0	3	1	0	0	4
0	0	0	9	4	0	2	12
0	0	0	27	1	4	6	27
0	0	0	66	3	69	28	59
0	0	0	110	10	73	36	108

1978 WAGE STUDY

AGE GRP.	YRS. SER.	NUMBER	AGGREGATE CURR YEAR SERV MONS	AGGREGATE CURR YEAR RRA COMP	AGGREGATE CURR YEAR RUIA COMP	CONTINUING SERVICE EMPLOYEES
63	7	1	12	16934	4800	1
	8	1	12	15421	4800	1
	9	1	2	111	111	1
	10-14	1	12	13718	4800	1
	15-19	5	47	53326	18800	5
	20-24	12	126	158787	49908	12
	25-29	20	198	268019	78373	20
	30+	52	542	752641	215768	52
Total		93	951	1278957	377360	93

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RE-ENTS	- NEW ENTRANTS - NUMBER	QUAL RUIA	MEN	WOMEN	EMPLOYEES WITH 354 SERV MONS	NUMBER WITH MAX RRA	ELIGI-BILITY
0	0	0	1	0	0	0	1
0	0	0	0	1	0	0	1
0	0	0	0	1	0	0	0
0	0	0	1	0	0	0	1
0	0	0	4	1	0	0	4
0	0	0	10	2	0	0	11
0	0	0	20	0	5	4	19
0	0	0	49	3	52	15	51
0	0	0	85	8	57	19	88

1978 WAGE STUDY

AGE GRP.	YRS. SER.	NUMBER	AGGREGATE CURR YEAR SERV MONS	AGGREGATE CURR YEAR RRA COMP	AGGREGATE CURR YEAR RUIA COMP	CONTINUING SERVICE EMPLOYEES
64	10-14	4	43	47320	16948	4
	15-19	1	8	8984	3015	1
	20-24	3	34	39152	13079	3
	25-29	15	133	162643	52504	15
	30+	27	267	360280	104894	26
Total		50	485	618379	190440	49

TABLE R-15

PAGE 18

RE-ENTS	- NEW ENTRANTS - NUMBER	QUAL RUIA	MEN	WOMEN	EMPLOYEES WITH 354 SERV MONS	NUMBER WITH MAX RRA	ELIGI-BILITY
0	0	0	4	0	0	0	4
0	0	0	0	1	0	0	1
0	0	0	3	0	0	1	3
0	0	0	15	0	4	1	15
1	0	0	27	0	27	6	24
1	0	0	49	1	31	8	47

1978 WAGE STUDY

AGE GRP.	YRS. SER.	NUMBER	AGGREGATE CURR YEAR SERV MONS	AGGREGATE CURR YEAR RRA COMP	AGGREGATE CURR YEAR RUIA COMP	CONTINUING SERVICE EMPLOYEES
65-69	10-14	7	71	81593	28096	7
	15-19	4	40	46478	16000	4
	20-24	10	84	109779	33600	10
	25-29	13	117	155544	45801	12
	30+	39	341	456567	132781	38
Total		73	653	849961	256278	71

TABLE R-15

PAGE 19

RE-ENTS	- NEW ENTRANTS - NUMBER	QUAL RUIA	MEN	WOMEN	EMPLOYEES WITH 354 SERV MONS	NUMBER WITH MAX RRA	ELIGI-BILITY
0	0	0	7	0	0	0	6
0	0	0	3	1	0	0	4
0	0	0	6	4	0	0	9
1	0	0	12	1	0	1	12
1	0	0	39	0	39	12	35
2	0	0	67	6	39	13	66

1978 WAGE STUDY

AGE GRP.	YRS. SER.	NUMBER	AGGREGATE CURR YEAR SERV MONS	AGGREGATE CURR YEAR RRA COMP	AGGREGATE CURR YEAR RUIA COMP	CONTINUING SERVICE EMPLOYEES
70+	15-19	4	43	43736	17200	4
	20-24	1	2	2394	800	1
	25-29	3	35	38305	13656	3
	30+	6	61	76508	24058	5
Total		14	141	160943	55714	13

TABLE R-15

PAGE 20

RE-ENTS	- NEW ENTRANTS - NUMBER	QUAL RUIA	MEN	WOMEN	EMPLOYEES WITH 354 SERV MONS	NUMBER WITH MAX RRA	ELIGI-BILITY
0	0	0	3	1	0	0	4
0	0	0	0	1	0	0	0
0	0	0	2	1	1	0	3
1	0	0	5	1	6	0	5
1	0	0	10	4	7	0	12

1978 WAGE STUDY

AGE GRP.	YRS. SER.	NUMBER	AGGREGATE CURR YEAR SERV MONS	AGGREGATE CURR YEAR RRA COMP	AGGREGATE CURR YEAR RUIA COMP	CONTINUING SERVICE EMPLOYEES
Unkwn	4	1	12	11890	4800	1
	5	1	12	16998	4800	1
	30+	3	26	36695	10302	3
Total		5	50	65583	19902	5

TABLE R-15

PAGE 21

RE-ENTS	- NEW ENTRANTS - NUMBER	QUAL RUIA	MEN	WOMEN	EMPLOYEES WITH 354 SERV MONS	NUMBER WITH MAX RRA	ELIGI-BILITY
0	0	0	1	0	0	0	1
0	0	0	1	0	0	0	1
0	0	0	3	0	3	1	2
0	0	0	5	0	3	1	4

1978 WAGE STUDY

AGE GRP.	YRS. SER.	NUMBER	AGGREGATE CURR YEAR SERV MONS	AGGREGATE CURR YEAR RRA COMP	AGGREGATE CURR YEAR RUIA COMP	CONTINUING SERVICE EMPLOYEES
ALL	< 1	1426	5,059	4863155	1878530	170
	1	519	4,266	4826251	1659654	474
	2	280	2,505	2993123	978424	255
	3	223	2,062	2493899	803125	212
	4	279	2,861	3516393	1122497	270
	5	314	3,284	4178497	1293184	297
	6	266	2,903	3742918	1151946	259
	7	314	3,386	4310226	1336694	311
	8	358	3,888	5023749	1540861	356
	9	381	4,290	5594703	1700745	379
	10-14	1301	14,794	19864974	5881425	1,291
	15-19	1007	11,501	15726325	4580242	1,001
	20-24	1218	14,051	19355170	5595136	1,213
	25-29	1273	14,619	20078657	5821203	1,272
	30+	1590	17,525	24207909	6966982	1,585
Grand Total		10749	106,994	140775949	42310648	9,345

TABLE R-15

PAGE 22

RE-ENTS	- NEW ENTRANTS - NUMBER	QUAL RUIA	MEN	WOMEN	EMPLOYEES WITH 354 SERV MONS	NUMBER WITH MAX RRA	ELIGI-BILITY
119	1137	337	1348	78	0	23	479
42	3	3	493	26	0	11	466
25	0	0	260	20	0	11	254
11	0	0	209	14	0	11	199
9	0	0	252	27	0	11	262
17	0	0	295	19	0	32	294
7	0	0	253	13	0	31	258
3	0	0	283	31	0	26	300
2	0	0	320	38	0	43	349
2	0	0	337	44	0	41	372
10	0	0	1186	115	0	213	1,279
6	0	0	937	70	0	251	988
5	0	0	1154	64	0	343	1,204
1	0	0	1207	66	126	358	1,253
5	0	0	1506	84	1,590	514	1,542
264	1140	340	10040	709	1,716	1,919	9,499

Appendix D

to June 20, 1980 Memorandum of RLEA

(Letter from FRA)

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION
Washington, D.C. 20590

A. E. Egbers
W. R. Denton
R. W. Russell
W. G. Mahoney
F. A. Hardin
R. T. Bates
M. E. Parks

(Clearinghouse Group, March 4
Labor Protection Agreement)

The following information reflects the current status of interim operations over Rock Island lines. Attachment I containing the mileage comparisons was prepared by checking with the Interstate Commerce Commission on interim operator authority, particularly those changes on June 1, and verifications with the carriers. The carload information is an update of 1978 Rock Island traffic obtained from the carrier.

The employment numbers listed below were obtained by telephoning the interim operators. In most cases the point of contact was the labor relations department. The employee counts, refer only to R.I. employees hired under the terms of the March 4 Agreement.

Employees as of 6/13/80:

Missouri Pacific	43
Fort Worth and Denver	18
Illinois Central Gulf	23
Southern Pacific	697
Chicago and Northwestern (CNW)	250
C.N.W. (commuter service for R.T.A. in Chicago)	500

Davenport, Rock Island and Northwestern	58	
Toledo, Peoria and Western	9	
Missouri-Kansas-Texas	366	
Burlington Northern	22	
Milwaukee Road	55	
Total Interim Operators		2,041
Kansas City Terminal (temporary employees)		300
Rock Island Trustee (temporary employees)		300
Total		2,641

/s/ William E. Loftus
William E. Loftus

Attachments

Attachment 1

Rock Island State By State Analysis

ICC INTERIM OPERATOR RECOMMENDATIONS

Effective 6/1/80

	MILEAGE		CARLOADS	
	Existing	*Interim Operations*	*Existing*	*Estimate Retained*
Arkansas	605	200	59,269	40,406
Colorado	258	92	18,539	17,697
Illinois	294	64	132,320	38,143 (1)
Iowa	1,717	848	199,271	178,862
Kansas	1,082	840	86,039	85,094
Louisiana	131	74	4,162	2,448
Minnesota	202	136	23,833	22,801
Missouri	492	472	22,949	17,676
Nebraska	150	43	14,847	7,182
New Mexico	153	129	110	109
Oklahoma	1,055	647	96,773	84,032
Tennessee	1	1	4,903	4,903
Texas	885	773	107,994	104,772 (2)
Total	7,025	4,319 (61%)	771,009	604,125 (78%)

(1) The ICG has expressed an interest in operating on the Joliet to Bureau segment, which would add 53,913 carloads.

(2) No adjustments have been made to Texas carloads because adjustments had previously been made in anticipation of service being provided.

Attachment 2

The following is a list of the segments of the Rock Island over which the ICC has authorized interim operations from June 1, 1980 to Aug. 31, 1980.

Chicago-Joliet, IL.
ICC Decision: RTA. (commuter service only, expires May 29, 1982)

Chicago-Calumet Port District, IL.
ICC Decision: Norfolk & Western (N&W)

Henry to Peoria, IL.
ICC Decision: Burlington Northern (BN)

Peoria Terminal, IL.
ICC Decision: Peoria & Pekin Union, and Toledo, Peoria, and Western (TP&W)

Silvis-Quad Cities-Milan, IL., Wilton, IA.
ICC Decision: Davenport Rock Island and North Western (DRI Line)

West Davenport-Muscatine-Fruitland, IA.
ICC Decision: Milwaukee Road (Milw.)

Keokuk, IA.
ICC Decision: TP&W

Burlington & Fairfield, IA.
ICC Decision: BN

Cedar Rapids, IA.
ICC Decision: C&NW

Waterloo, IA.
ICC Decision: Illinois Central Gulf (ICG)

Washington, IA, and Seymour-Centerville, IA.
ICC Decision: Milw.

Minneapolis and St. Paul-Kansas City Plus Northwest Iowa Grain Lines
ICC Decision: Chicago and North Western (C&NW)

Des Moines and Nearby Stations East and West (Including Newton, Earlham, Pella and Indianola)
ICC Decision: C&NW

Fairbury-Hallam, NE.
ICC Decision: Union Pacific (UP)

Phillipsburg-Almena, KS.
ICC Decision: BN

Colby-Caruso, KS.
ICC Decision: UP

Tucumcari-Topeka-Kansas City-St. Louis (including Dodge City & North Topeka)
ICC Decision: St. Louis Southwestern (SSW)

Herington, KS. to Ft. Worth, TX.
ICC Decision: Missouri-Kansas-Texas (MKT)

El Reno-Oklahoma City-McAlester, OK.
ICC Decision: MKT

North Fort Worth, TX.
ICC Decision: Fort Worth & Denver (FWD)

Fort Worth-Dallas, TX.
ICC Decision: MKT

Irving-Carrollton, TX.
ICC Decision: St. Louis San Francisco (Frisco)

Dallas, Cadiz Street Yard, TX.
ICC Decision: Kansas City Southern (KCS)

Waxachie-North Houston, TX.
ICC Decision: BN

Amarillo, TX., and Amarillo to Bushland, TX.
ICC Decision: FW&D

Memphis, TN. to Brinkley, AR. & Stuttgart, AR.
ICC Decision: SSW

Ruston, LA.
ICC Decision: ICG

Hodge to Winnfield, LA., & Alexandria, LA. Yard
ICC Decision: KCS

Beatrice, NE.
ICC Decision: UP

E Dorado, AR.
ICC Decision: Eldorado & Wesson (E&W)

Newport to South St. Paul, MN.
ICC Decision: Milw.

Denver and Colorado Springs, CO.
ICC Decision: Denver & Rio Grande Western

Hobart to Mangum, OK.
ICC Decision: Southwestern Oklahoma Railroad Co.

Little Rock to Perry, AR.
ICC Decision: Little Rock and Western Railway Co.

Pulaski-Little Rock-Hazen, AR., Hot Springs Jct. to A.P. Green, AR.
ICC Decision: Missouri Pacific (MP)

Haskell to Hot Springs, AR., Malvern to Butterfield, AR.
ICC Decision: MP

Topeka, KS.-St. Joseph, MO.-Atchison, KS., Herington to Salina, KS., Trackage Rights Herington to Topeka, KS.
ICC Decision: MKT

North Enid to Billings, OK., Chickasha-Anadarko-Richards Spur, OK.
ICC Decision: MKT

Appendix F

to June 20, 1980 Memorandum of RLEA

(FRA Affidavit)

I, James G. Gidding, being duly sworn deposes and says:

(1) I am Acting Chief, Financial Analysis and Administration Division, Office of National Freight Assistance Programs, Federal Railroad Administration.

(2) As such I am officially in charge of the administration of such division including (a) receipt and filing of applications; (b) maintenance of docket records; (c) the analysis of applications for financial assistance; (d) the docket file for Title V of the Railroad Revitalization and Regulatory Reform Act of 1976, the Emergency Rail Services Act of 1970 and other financial assistance programs; and (e) administration of recommendations for drawdowns of financial assistance which are approved by the administrator of the Federal Railroad Administration or his delegate.

(3) In my official capacity as Acting Chief, Financial Analysis and Administration division, Office of National Freight Assistance Programs, Federal Railroad Administration, I have examined or caused to be examined the records of this office and have determined that: (a) Richard B. Ogilvie, Trustee of the Property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company did file an application entitled, "Section 511 dated January 10, 1980 for $75,000,000 Loan Guarantees for Milwaukee Railroad Employee Protection;" (b) said application was received by this office and entered on its records with Docket Number RFA 511-80-1 on January 11, 1980; (c) thereafter, upon examination of said application, and recommendations of the Office of Federal Assistance and Chief Counsel on March 3, 1980, a Financing Agreement was entered into between the Federal Railroad Administrator and the Trustee providing the $75 million of labor protection funds; and (d) subsequently, according to documents on file with this office, a Guarantee Agreement dated March 7, 1980 was entered into by and between the Administrator of the Federal Railroad Administration and the Federal Financing Bank.

(4) Subsequently, and pursuant to a Trustee Certificate bearing date of March 3, 1980 and identified as No. 180-C (4R/511) drawdowns were authorized by the Associate Administrator for Federal Assistance, as delegate of the Administrator for the purpose of providing the labor protection funding referred to in the following amounts on the dates shown:

Drawdown No. 1	$6.6 million	April 21, 1980
Drawdown No. 2	$9.1 million	May 14, 1980
Drawdown No. 3	$2.8 million	June 19, 1980

JAMES G. GIDDING

District of Columbia
City of Washington

Sworn to and subscribed before me this 19 Day of June 1980.

/s/ RAY BOGLE
My commission expires May 1, 1982

Exhibit 1

to Supplemental Memorandum of RLEA,

letter and attachments

dated October 22, 1980

UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 Rush Street
Chicago, Illinois 60611

October 20, 1980

Mr. John O'B. Clarke, Jr.
Highsaw, Mahoney & Friedman
Suite 210
1050 Seventeenth Street, N.W.
Washington, D. C. 20036

Dear Mr. Clarke:

Enclosed herewith is the information in the possession of the Board that you requested as to the statistical breakdown of (1) the number of individuals employed by the Chicago, Rock Island and Pacific Railroad (A) in both August and December 1979, (B) in August 1979 and employed by another rail carrier in December 1979, and (C) in August 1979 and not employed by any rail carrier in December 1979, and (2) the same three categories of individuals reduced by the number of individuals who, as of September 30, 1980, either (A) were receiving unemployment insurance benefits under the Railroad Unemployment Insurance Act, or (B) had applied for railroad retirement benefits under the Railroad Retirement Act of 1974. As you are aware, the maximum amount of unemployment insurance benefits an individual can receive in a 2-week registration period is $250; $25 per day for 10 days out of each 14-day registration period.

The information contained in the accompanying document was derived from information contained in records of benefit payments and compensation by our Bureaus of Unemployment and Sickness Insurance and Data Processing and Accounts. The information was compiled and maintained in the normal and routine course of the Board's official duty.

As Secretary of the Board, the undersigned has custody of enclosed material and has affixed the seal of the Board thereto in certification that it is a true and accurate copy of records in the Board's possession.

Very truly yours,

/s/ R. F. Butler
For the Board
R. F. Butler, Secretary

Enclosure

Statistical data on certain individuals employed by the Chicago, Rock Island and Pacific Railroad

	Column I *Before Purge of Records*[1]	Column II *After Purge of Records*
Employees in Service August and December 1979—working in both months for the Rock Island Railroad	8,407	4,718
Employees in Service August 1979—working for the Rock Island Railroad December 1979—working for another railroad	312	281
Employees in Service August 1979—working for the Rock Island Railroad December 1979—not working for any railroad	994	670
Total	9,713	5,669[2]
340 employees with Railroad Retirement Board claim numbers		
3,704 employees drawing unemployment insurance benefits under the Railroad Unemployment Insurance Act[3]		
4,044 total number of individuals to be eliminated from initial column of statistics		
5,669 employees remaining		
9,713		

[1] The purge consisted of the elimination of 4,044 individuals from Column I: 340 former Rock Island Railroad employees with retirement claim numbers; and 3,704 Rock Island Railroad employees who as of September 30, 1980, were drawing unemployment insurance benefits.

[2] This number includes nine individuals who have filed for unemployment insurance benefits but who are ineligible for benefits.

[3] The maximum unemployment insurance benefit during each two-week registration period is $250; $25 per day for a maximum of ten days during the 14-day registration period.

Exhibit 2

to Supplemental Memorandum of RLEA,

letter and attachment

dated June 19, 1980

UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 Rush Street
Chicago, Illinois 60611

June 19, 1980

Mr. John O'B. Clarke, Jr.
Highsaw, Mahoney & Friedman
Suite 210
1050 Seventeenth Street, N.W.
Washington, D. C. 20036

Dear Mr. Clarke:

Enclosed herewith is the information in the possession of the Board that you requested as to the statistical breakdown of Chicago, Rock Island and Pacific Railroad employees who are currently receiving unemployment insurance benefits and those who have exhausted unemployment insurance benefits for the current benefit year.

The information contained in the accompanying document was derived from information contained in records of benefit payments by our Bureau of Unemployment and Sickness Insurance. The information was compiled and maintained in the normal and routine course of the Board's official duty.

As Secretary of the Board, the undersigned has custody of the enclosed material and has affixed the seal of the Board thereto in certification that it is a true and accurate copy of records in the Board's possession.

Very truly yours,

/s/ R. F. BUTLER
For the Board
R. F. Butler, Secretary

Enclosure

Report of Rock Island Railroad Employees Currently Claiming Unemployment Benefits Under the Railroad Unemployment Insurance Act

The maximum number of days for which normal unemployment benefits are payable in a benefit year is 130. The general benefit year begins July 1 and ends June 30. Depending on his years of service, an employee may be eligible for extended benefits upon exhaustion of his normal benefits.

There are 2,557 Rock Island employees currently claiming unemployment benefits under the Railroad Unemployment Insurance Act. Of those employees, 882 have less than 120 service months and are currently claiming normal benefits. They will not be eligible for extended benefits, but may be qualified for 130 days in normal benefits when the new benefit year begins July 1.

There are 396 employees currently claiming normal benefits who have 10 but less than 15 years of service. Those employees would be eligible for 65 days in extended benefits upon exhaustion of their normal benefits. The new benefit year would begin for these employees after their extended benefits are exhausted. They would then be eligible for 130 days in normal benefits and 65 days in extended benefits.

There are 1,236 employees with at least 15 years of service currently claiming normal benefits. They would be eligible for 130 days in extended benefits upon exhaustion of their normal benefits. When the new benefit year begins for them (after the exhaustion of extended benefits), they would be eligible for 130 days in normal benefits and 130 days in extended benefits.

There are 43 employees who have already exhausted normal benefits and are now claiming extended benefits. The ending dates of their extended benefit periods range from as early as July 1, 1980 to as late as January 1, 1981. When those employees exhaust their extended benefits,

they will again be eligible for 130 days in normal benefits. Upon exhaustion of those normal benefits, employees with 10 but less than 15 years of railroad service will be eligible for 65 days in extended benefits. Employees with 15 years or more of service will be eligible for extended benefits for 130 days.

There are 328 employees who have less than 10 years of service and who have exhausted normal benefits.

Exhibit 3

to Supplemental Memorandum of BLEA.

letter and affidavit

of Railroad Retirement Board Official

UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 Rush Street
Chicago, Illinois 60611

Office of the Secretary

I, R. F. Butler, Secretary of the Railroad Retirement Board, hereby certify that Mr. George A. Delaney is Director of Unemployment and Sickness Insurance of the Railroad Retirement Board, and as such has authority to speak with respect to the responsibilities and functions delegated to the Railroad Retirement Board under the Rock Island Railroad Transition and Employee Assistance Act.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Railroad Retirement Board on this 16th day of October 1980.

/s/ R. F. BUTLER
R. F. Butler
Secretary
Railroad Retirement Board

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No.

In the Matter of

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY,
Debtor.

Appeals of:

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Appellant-Intervenor.

State of Illinois, County of Cook, ss.

AFFIDAVIT OF GEORGE A. DELANEY, DIRECTOR OF UNEMPLOYMENT AND SICKNESS INSURANCE, RAILROAD REITREMENT [sic] BOARD

I, George A. Delaney, Director of Unemployment and Sickness Insurance, Railroad Retirement Board, being first duly sworn, depose and say as follows:

That by reason of the provisions of sections 106(e), 107, 108, 114, 115, and 119 of the Rock Island Railroad Transition and Employee Assistance Act, the Railroad Retirement Board is assigned certain responsibilities for the administration of the Act.

In order to implement and carry out its responsibility to accept applications and certify benefits to be paid by the Rock Island Railroad under an employee protection agreement under section 106 of the Act and to pay benefits directly to beneficiaries under section 119 of the Act, the Railroad Retirement Board must do the following:

1. Promulgate regulations for the adjudication of claims by the Rock Island employees for benefits or payments due them under the employee protection agreement mandated by section 106 of the Act and for new career training assistance payments provided for under section 119 of the Act; since no such agreement exists now, it would take the Rail-

road Retirement Board approximately three to six months from the date of such agreement to publish final agency regulations in accordance with such an agreement.

2. On the assumption that benefits provided for under an employee protection agreement will depend, in part, on an employee's status as an employee and his prior earnings as a Rock Island employee, the Railroad Retirement Board would have to obtain from the Rock Island Railroad wage and employment records of whatever type might be required for the adjudication of claims under the agreement.

3. Draft operating instructions and procedures for the guidance of Railroad Retirement Board employees assigned to the task of processing Rock Island employee benefit claims and to provide training for those employees. Some three months time would be required for this. Included here would be the consideration whether processing of claims could be performed by means of a computer processing system.

4. Draft employee benefit claim forms and secure the necessary approvals from the Office of Management and Budget; about 4-5 months time would be required for this.

5. Obtain funds for the payment of new career training assistance claims; it would likely take about six months to obtain the funds.

6. Publish an amended document for distribution to Rock Island employees describing in detail their rights under section 106, 107, 108 and 119 of the Act.

/s/ GEORGE A. DELANEY
George A. Delaney
Director of Unemployment and
Sickness Insurance

Subscribed and sworn before me
this 16 day of October 1980.

/s/ THOMAS W. SEALLER
Notary Public
My commission expires 1-10-83.

Affidavit of Trustee

dated June 5, 1980

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 75 B 2697

In the Matter of

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, Debtor, WILLIAM M. GIBBONS, as Trustee of the Chicago, Rock Island and Pacific Railroad Company, Debtor; CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Indenture Trustee; THE FIRST NATIONAL BANK OF CHICAGO, as Indenture Trustee; and HENRY CROWN, et al., *Plaintiffs*,

v.

THE UNITED STATES OF AMERICA; THE INTERSTATE COMMERCE COMMISSION; and NEIL GOLDSCHMIDT, United States Secretary of Transportation, *Defendants*.

In Proceedings for the Reorganization of a Railroad

AFFIDAVIT OF WILLIAM M. GIBBONS, TRUSTEE

This Affidavit is submitted in support of the Trustee's Motion for a Temporary Restraining Order against implementation of the Rock Island Act pending resolution of the constitutional questions raised in the Complaint filed as of this date. In support thereof, the affiant states as follows:

1. I, William M. Gibbons, am Trustee of the Chicago, Rock Island and Pacific Railroad Company, Debtor, pursuant to an Order of this Court of March 28, 1975.

2. As Trustee, pursuant to the Order of this Court and Section 77 of the Bankruptcy Act, it is my fiduciary duty to preserve the assets of the estate for the benefit of its creditors.

3. Under an Order of this Court of January 25, 1980, it is my responsibility to proceed with the liquidation of this estate.

4. Under the Order of this Court of June 3, 1980, it is my responsibility to effect the abandonment of lines and discontinuance of service by the Rock Island Railroad. In connection therewith, this Court has prohibited me from entering into any agreements or obligations imposing labor protection costs on the estate.

5. Under Section 106 of the Rock Island Transition and Employee Assistance Act, which was signed into law on Friday, May 30, 1980, I may enter into a labor protection agreement with representatives of labor organizations which represent the former employees of the Rock Island.

6. If I do not enter into a voluntary agreement on behalf of the estate with labor representatives within 10 days of the Act's enactment—that is, by Monday, June 9, 1980—I will become subject to an order of the defendant Interstate Commerce Commission (the "Commission") to implement a labor protection arrangement imposed by the Commission.

7. Any involuntary arrangement imposed by the defendant Commission concerning labor protection under the Act will become an administrative expense against the assets of the estate. Under the terms of the Act, the cost of such an arrangement may amount to $75,000,000.

8. The $75,000,000 cost of the labor protection arrangement which may be imposed by the Commission will be imposed on the estate through an involuntary taking or loan guaranteed by the federal government which will be an administrative expense against the assets of the estate.

9. Under Section 106(b) of the Act, the defendant Commission will have jurisdiction to impose the labor protection arrangement commencing Monday, June 9, 1980.

10. The duties mandated of me by the Act to implement the labor protection arrangement imposed by the Defendant Commission directly conflict with my duties to preserve and liquidate the assets of the estate for the highest and best values obtainable and will dilute the value of those assets available for the creditors and shareholders.

11. The Act further provides that this Court shall order me to implement an Interstate Commerce Commission arrangement without review of that arrangement by this Court. Under the Act, there may be no stay of a labor protection arrangement imposed by the Interstate Commerce Commission by this or any other Court. The costs of the labor protection arrangement imposed by the Interstate Commerce Commission would have administrative expense status and would not be subject to judicial review prior to implementation. The Interstate Commerce Commission jurisdiction and the imposition by the Commission of a labor protection arrangement under the Act would thus result in irreparable injury to the estate.

12. The estate would also suffer irreparable injury by the implementation of a labor protection arrangement under the Act because the payments required would be to numerous individuals and would be recoverable only through numerous lawsuits if at all.

13. I have read the Complaint for Declaratory Relief and a Preliminary Injunction which was filed on this date in these proceedings, and state that the allegations as to the matters contained therein are true and complete to the best of my knowledge, information and belief.

Further affiant sayeth not.

/s/ William M. Gibbons
William M. Gibbons, Trustee
Chicago, Rock Island and
Pacific Railroad Company,
Debtor

Subscribed and Sworn to
before me this 5th day
of June, 1980.

/s/ Francis H. King
Notary Public

Affidavit of Trustee

dated October 10, 1980

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 75 B 2697

In the Matter of

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, Debtor, WILLIAM M. GIBBONS, as Trustee of the Chicago, Rock Island and Pacific Railroad Company, Debtor; CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Indenture Trustee; THE FIRST NATIONAL BANK OF CHICAGO, as Indenture Trustee; and HENRY CROWN, et al., *Plaintiffs*,

v.

THE UNITED STATES OF AMERICA; THE INTERSTATE COMMERCE COMMISSION; and NEIL GOLDSCHMIDT, United States Secretary of Transportation, *Defendants*.

In Proceedings for the Reorganization of a Railroad

AFFIDAVIT OF WILLIAM M. GIBBONS, TRUSTEE

William M. Gibbons deposes on his oath and states as follows:

1. I, William M. Gibbons, am Trustee of the Chicago, Rock Island and Pacific Railroad Company, Debtor, pursuant to an Order of this Court of March 28, 1975.

2. As Trustee, pursuant to this Court's Order and Section 77 of the Bankruptcy Act, it is my fiduciary duty to preserve the assets of the estate for the benefit of its creditors.

3. Under this Court's Order of January 25, 1980, it is my responsibility to proceed with the liquidation of this estate.

4. Under the Order of this Court of June 3, 1980, it is my responsibility to effect the abandonment of lines and discontinuance of service by the Rock Island Railroad. In connection therewith, this Court has prohibited me from entering into any agreements or obligations imposing labor protection costs on the estate.

5. Under Section 106 of the Rock Island Transition and Employee Assistance Act, as amended by the Staggers Rail Act of 1980, I must enter into a labor protection agreement with representatives of labor organizations which represent the former employees of the Rock Island, if at all, within 5 days of the enactment of the Staggers Rail Act of 1980.

6. If I do not enter into a voluntary agreement on behalf of the estate with labor representatives within 5 days, I will become subject to an order of the defendant Interstate Commerce Commission (the "Commission") to implement a labor protection agreement imposed by the Commission. The Commission must act within 15 days of the enactment of the Staggers Rail Act.

7. Any involuntary arrangement imposed by the defendant Commission concerning labor protection under the Act will become an administrative payable out of the assets of the estate. Under the terms of the Act, the cost of such an arrangement may amount to $75,000,000.

8. The $75,000,000 cost of the labor protection arrangement which will be imposed by the Commission will be imposed on the estate through an involuntary taking or loan guaranteed by the federal government which will be a administrative expense against the assets of the estate.

9. The duties imposed upon me by the Act to implement the labor protection arrangement imposed by the defendant Commission directly conflict with my duties to preserve and liquidate the assets of the estate for the highest and

best values obtainable and will dilute the value of those assets available for the creditors and shareholders.

10. The Act further provides that this Court shall order me to implement an Interstate Commerce Commission arrangement. The costs of the labor protection arrangement imposed by the Commission would have administrative expense status and would not be subject to final judicial review prior to implementation. The Interstate Commerce Commission jurisdiction and the imposition by the Commission of a labor protection arrangment [*sic*] under the Act would thus result in irreparable injury to the estate.

11. The Act imposes a timetable whereby within 15 days after its enactment, the terms of a labor protection arrangement will be imposed by the Commission. The Act directs the Court to immediately implement the Commission's labor protection plan. Within 16 days, the Rock Island estate will thus be exposed to a $75,000,000 obligation and be required to make labor protection payments immediately.

12. Many of the suppliers, other railroads and providers of various services necessary to effect an orderly disposition of the assets of the estate are themselves administrative expense or pre-reorganization creditors of the Rock Island estate. With the addition of a $75,000,000 expense of administration claim, many of these individuals and businesses are likely to become unwilling or unable to extend further credit to the Rock Island estate. The imposition of this debt therefore will seriously affect my ability to effect an orderly liquidation of the estate and to realize its highest value for the benefit of its creditors and shareholders.

13. The estate would also suffer irreparable injury by the implementation of a labor protection arrangement under the Act because the payments would be made to numerous individuals and would be recoverable only through numerous lawsuits, if at all.

14. As a result of the Act the estate will be required to borrow funds from the United States pursuant to Section 110 of the Rock Island Act to meet this labor protection obligation. Those funds can be advanced only if they are awarded priority status. That $75 million loan will become a claim against the estate which must affect the prospects for an orderly liquidation of the railroad for it is unlikely that any disposition of other claims against the estate can occur prior to a resolution of this claim.

AND FURTHER, AFFIANT SAYETH NOT.

WILLIAM M. GIBBONS, Trustee,
Chicago, Rock Island and
Pacific Railroad Company,
Debtor

SUBSCRIBED and SWORN to
before me this 10th day
of October, 1980.

Notary Public

Affidavit of Trustee

dated October 28, 1980

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 75 B 2697

In the Matter of

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY,
Debtor.

In Proceedings for the Reorganization of a Railroad

AFFIDAVIT OF WILLIAM M. GIBBONS, TRUSTEE

This Affidavit is submitted in support of the Debtor's reply brief in the above entitled proceeding. In support thereof, the affiant states as follows:

1. I, William M. Gibbons, am Trustee of the Chicago, Rock Island and Pacific Railroad Company, Debtor, pursuant to an Order of March 28, 1975 of the United States District Court for the Northern District of Illinois, Eastern Division, Case No. 75B2697 ("Reorganization Court").

2. As Trustee, pursuant to the Order of Court and Section 77 of the Bankruptcy Act, it is my fiduciary duty to preserve the assets of the estate for the benefit of its creditors.

3. I have read the "Supplemental Memorandum of Railway Labor Executives' Association in Support of Stay of Preliminary Injunction Pending Appeal" and the attached Exhibits, including the affidavit of George A. Delaney, Director of Unemployment and Sickness Insurance, Railroad Retirement Board ("RRB"). I disagree that the estate will not sustain any irreparable harm if the stay request is granted for the reasons below set forth.

4. The most glaring misstatement contained in the aforementioned Supplemental Memorandum is RLEA's contention that "before the Trustee can be required to pay any

benefits under the arrangement, the RRB must determine the amounts due and 'shall certify such amount to the Rock Island for payment'." When an arrangement has been imposed on the estate, it is erroneous to assume that the Trustee would not be required to pay benefits or allowances until the RRB first determines and certifies the amount due employees for payment. If the Trustee faces an experience similar to Milwaukee Road's experience under the Milwaukee Railroad Restructuring Act (45 U.S.C. 908) and companion Milwaukee Agreement, the Trustee would be requested by separated employees and would be required to immediately pay benefits and allowances irrespective of any certification by the RRB.

If an agreement is reached by the parties or imposed by the Interstate Commerce Commission pursuant to Section 106(b) of the amended Act, it is presumed that such an agreement will be a "fair and equitable" arrangement as defined therein to mean "no less protective of the interests of employees than protection afforded under Section 9 of the Milwaukee Railroad Restructuring Act. . . ." By reason thereof, such an agreement might contain, among other things, provisions for separation allowances similar to the Milwaukee Agreement which provide for a separation allowance to each separated employee "in an amount equal to $2,000 for each year of completed service", [*sic*] with a total amount "not to exceed $25,000." Separation allowances at Milwaukee were paid on an expeditious basis irrespective of any RRB involvement or promulgation of regulations regarding implementation of other benefit features in the protection agreement. Based on the Milwaukee experience, the Trustee, under similar imposed protection agreement circumstances, would be required to pay benefits almost immediately to former employees requesting separation allowances in accordance with the agreement. Consequently, Rock Island's estate, contrary to the RLEA's position in its memorandum which purports to show the opposite, would sustain immediate and irreparable harm.

Exhibit 1 hereto clearly points up the immediate costs confronting the Trustee if he is required to implement an employee protection agreement containing provision for separation allowances. This exhibit demonstrates that an initial separation allowance payment by the Trustee, based on the very statistics furnished by the RLEA and RRB, approximates $46,065,000.

5. It is important to consider the Milwaukee experience in the context of the limited administrative burden that RRB has in the ultimate process of distributing benefits. According to information supplied by the Milwaukee Railroad, its Systems Department prepared detailed earnings tapes for all employees for a twenty-nine month period. The payroll tapes were then sent to the RRB. Also sent to the Board was a tape file which showed the name, Social Security Number, Union code, and starting date and seniority date of each employee. The RRB returned a tape to the Milwaukee Road, showing for each employee, the average straight time earnings for a twenty-nine month period of time, and the straight time earnings for each of the twenty-nine months. The work performed by the RRB in the Milwaukee situation, and which would be similar in the case of the Rock Island, did not take two or three months. According to available information, the type of work involved took three to four weeks to complete, and not two to three months suggested by the RLEA's Supplemental Memorandum. RRB's burden, consequently of assembling data is almost inconsequential since the railroad supplies such data expeditiously.

6. Also, on information and belief, the RRB never promulgated regulations pertinent to the implementation of benefits or disputes arising over the calculation of payment of benefits. Such regulations appeared unnecessary and may be unnecessary in Rock Island's case.

7. Further, on information and belief, an overwhelming majority of separated employees at Milwaukee Road opted

for separation allowances instead of interim employee assistance benefits, and such allowances were paid almost immediately in accordance with the terms of the Milwaukee Agreement. If a similar agreement were to be imposed on the Rock Island Trustee, the experience at Rock Island would be the same.

8. The same procedures and time frame will govern at the Rock Island if the Trustee is required to enter into and implement an employee protection agreement pursuant to the Rock Island Railroad Transition and Employee Assistance Act, as amended, with immediate and irreparable harm to the estate.

9. I have read the above affidavit and state that it is true to the best of my knowledge, information and belief.

Further affiant sayeth not.

William M. Gibbons, Trustee
Chicago, Rock Island and Pacific
Railroad Company, Debtor

Subscribed and sworn before me
This 28 day of October, 1980.

Notary Public
My commission expires:

EXHIBIT 1

Separation Allowance Criteria Under the Milwaukee Employee Protection Agreement

Under the Milwaukee Employee Protection Agreement, a separation allowance shall be payable to a separated employee in an amount equal to $2,000 for each year of completed service, except that the total amount of separation allowance payable to a separated employee shall not exceed $25,000.

At Milwaukee, any separation allowance of $8,000 or more was paid in the following manner: (1) 75% of such amount was paid at the time the employee was separated; and (2) the remaining balance is payable on or about July 1, 1981 on a pro-rata basis if the total amount of all separation allowances exceeded $75,000,000.

Example: Application of Milwaukee Separation Allowance Criteria at the Rock Island

Assuming that approximately 3,700 Rock Island employees in service as of August 1, 1979, are now drawing United States Railroad Unemployment Insurance Benefits (as indicated by the Railroad Retirement Board) and, assuming further, that said number of employees each have an average of 12½ years of seniority at Rock Island, the following formula/calculation applied at Milwaukee in the distribution and payment of separation allowances might apply with equal force at Rock Island if a similar arrangement is imposed on the Trustee by the Interstate Commerce Commission pursuant to Section 106(b) of the Rock Island Railroad Transition and Employee Assistance Act, as amended.

MAXIMUM 12½ YEARS SERVICE = $25,000 SEPARATION ALLOWANCE

75% of $25,000 when separated =	$ 18,750
3700 eligible employees at $18,750 =	69,375,000
12 months X RRUI $525 = $6,300 X 3,700 =	$23,310,000
Total 75% Separation Allowance Payout =	$46,065,000
Maximum Trustee Funds =	$75,000,000
Less Separation Allowance Payout	46,065,000
Balance Trustee Fund For Further Payments =	$28,935,000

Summary:

The Trustee of the Rock Island estate, under Milwaukee type conditions, would face an immediate liability of $46,065,000 if 3,700 Rock Island employees opted for separation allowances in lieu of other benefits under an employee protection arrangement.

Hearings and Orders Relating

To Preliminary Injunctions

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 75 B 2697

In the Matter of:

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY,
Debtor.

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled matter before the HONORABLE FRANK J. MCGARR, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Monday the 9th day of June, 1980, at the hour of 10:00 o'clock a.m.

* * *

[6] THE CLERK: 75 B 2697, in the matter of the Chicago, Rock Island & Pacific Railroad Company, Debtor, et. al., versus the United States of American, et al. Hearing on motion for a temporary restraining order and preliminary injunction (Trustee, Continental Bank, First National Bank, Crown et al.).

THE COURT: Good morning, Mr. Manos.

MR. MANOS: Good morning, your Honor.

[7] THE COURT: Good morning, gentlemen from Washington. I see you got here bright and early this morning. I appreciate your coming out on such short notice.

MR. MANOS: Your Honor, a brief has been submitted to the Court. This being a brief of ——

MR. RUSH: Can I get a copy of the brief?

MR. MANOS: A brief was submitted earlier this morning.

THE COURT: I have seen it. I have held it in my hand, I have dipped into it, but I can't say I've done much more

than that. I've skimmed through it, Mr. Manos, so I have a general familiarity with the points you've raised.

What precisely is the relief you seek this morning?

MR. MURRAY: Your Honor, may I make one statement for the record?

THE COURT: Yes, Mr. Murray.

MR. MURRAY: About the brief we filed this morning, your Honor. Obviously we're operating under great time pressures here and we prepared this brief over the weekend, and we have additional copies with clean-ups of typographical errors which appear in the brief and it should be here in about ten or fifteen minutes, and then we'll have additional copies for all of the counsel of record. We [8] supplied copies this morning to Mr. Rush and Mr. Broadley, but we will have final corrected copies this morning to substitute in the record, if your Honor would grant us leave to do that.

THE COURT: You may do that.

MR. MURRAY: Thank you, your Honor.

MR. MANOS: Your Honor, what is sought here this morning is a temporary restraining order on the I.C.C. and on the Secretary of Transportation from proceeding Acts which are prescribed under the Rock Island Act, a copy of which has been furnished to the Court, along with the pleadings that have been filed in connection with the complaint for declaratory judgment and for preliminary injunction.

Your Honor, the injunctive relief which is sought here is appropriate and necessary to protect this Estate, and unless the injunctive relief by way of a temporary restraining order is entered today, and ultimately by preliminary injunction, the power of this Court to consider the constitutional aspect of the Act and what is permissable under the Act will be taken away from this Court, will be placed

in an arena where the Trustee and the creditors say due process is extinguished, and there is set in motion then the very Acts that we say are unconstitutional here. In other words, the [9] uncompensated taking, which in essence is the $75 million imposition of a claim against the Estate, in a situation where there is no public interest, where the purpose as stated, if the Act is not a correct purpose, the Rock Island has been ordered to terminate all of its operations and to abandon its system, the I.C.C. has said that it must do so, or has recommended that it do so, the Court has adopted that finding and has ordered that all systems be abandoned, that there be a total cessation of operations, that there is no labor protection, and the Court by its very utterances on June 2nd, on the record, made amply clear that that is no longer a concern as far as this Estate is concerned, which now must distribute its assets to the creditors. It's no longer deeply concerned, although it did express a continuing interest in what happens to the public. But, as far as the Estate is concerned, it must be preserved and distributed without dilution and there must be the highest and best benefits achievable by the Trustee in this liquidation.

Consequently, when Congress enacted this Act and stated as a public purpose that it must grant $75 million to labor, and I misuse the word "grant," this is a burden on the Estate, this is a claim now that is generated that must be paid out of the Estate, when it said that this claim must be paid out of this Estate as [10] a burden, it currently said that the reason that this has to be done is that there is a public interest of the necessity of continuing the operations of the Rock Island where these operations are central, but there is no logical connection, Judge, between what Congress said was a public interest and what truly is public interest here. The public interest has already been served. Your Honor has witnessed months and months of directed service, where the FRA, where the I.C.C. attempted to filter and sift what is the public interest. In other words, what carriers are interested in buying por-

tions of the Rock Island so as to continue this public interest.

Now, it has happened, we know where the expressions of interest are. We also know that this Estate is not going to continue in operation. As far as the public interest in this Estate is concerned, this public interest now has been transferred to the other carriers that may at some later time, hopefully, take over the lines of the Rock Island and employ some of the employees of the Rock Island, hopefully under the conditions that were established by an agreement that was reached between the Unions and the carriers and known as the Miami Accord.

Consequently, Congress was absolutely wrong in saying that there was a public purpose and a necessity for the imposition of a claim on this Estate in the public [11] interest, and therein lies the basis of the Trustee and the creditors saying that this is an uncompensated taking under the Fifth and Fourteenth Amendments to the Constitution.

In a climate where the Court has already decided that constitutionally it was mandated that this operation should cease, that constitutionally the creditors are entitled to a liquidation of the assets and a liquidation of the assets now, without any dilution on a claim which Congress now says must be imposed, and incidentally imposed ex post facto.

Now, Your Honor, due process is threatened here today unless a temporary restraining order is entered. My remarks, Your Honor, I will not go over each facet of the argument that is so cogent to the ultimate determination of the constitutionality of the Act, but what I'm addressing today are the important elements that the Court must deal with in connection with a temporary restraining order.

Due process is threatened here today because today is the date that the I.C.C. triggers its decision on labor protection, and it's mandated to do so under the Act. Ten days have gone by since the enactment of the statute. The Com-

mission on Friday served Mr. Gibbons with a notice and said look, you're required to submit [12] the matter now to the Commission because you weren't able to agree on a negotiated settlement with the Unions, and the Union representatives and the employee representatives. Consequently, Mr. Gibbons now has been given a long laundry list of what the Commission needs in order that it must reach a decision within 20 days. The Act says the decision must be reached within 30 days of the enactment. So now the Commission has 20 days to do so, wherein lies now the deprivation of due process. If the Commission, as it will, it already has announced through its general counsel what its decision is going to be in a letter to Senator Kassebaum, already announced it, when the Commission imposes its burden within the 20-day period, what it set in motion is a process that takes away the power of this Court to examine the constitutionality of this Act. It compels your Honor to order this man, the Trustee, to implement the order, and conceivably the assets of this Estate at that stage can be ordered to be paid in implementation of labor protection. It is also conceivable then that as soon as this order is entered, since there is no stay, since your Honor is mandated, without even the authority given it to examine a claim and to adjudicate it, now mandated, without having the opportunity to examine into the validity of the claim, mandated to tell Mr. Gibbons to go ahead and pay it out [13] now, this is it, you pay it out of the assets of the Estate, or if there is not enough assets that have been liquidated so far, then you go to the FRA and you take that loan, because Congress has told me that I must force you to do it, and Congress forces me to tell you to go take the money and pay it out.

I'm not finished with the due process deprivations, because then the Act says the only appeal that can be taken, this Court can't stay, incidentally, the action of the Commission, but the only appeal that can be taken is to the Seventh Circuit, and that appeal, in a steamroller fashion, has to be terminated or adjudicated in 60 days. But, there

is no stay in the interim of the implementation of the Act. The Seventh Circuit now may or may not be able to render an informed judgment. It doesn't have before it the five long years of experience, and when I say long years, comparatively long in the history of railroad reorganizations, or I should say comparatively short, but nevertheless, five long years of administration here, and the record is not before the Seventh Circuit Court of Appeals, and even if presented to it, the Justices in the Seventh Circuit are going to have to wade through the five years of administration to see whether the Trustee and the creditors have any kind of a merit to their claim and then steamroller [14] determinations must be made, and then the money maybe is gone, and even if the Act is confirmed at that point and found to be constitutional, the irreparable harm has set in. But, most certainly the due process has been extinguished.

Other big elements relative to the due process is that this irreversible procedure which this Act, in a very subtle but insidious way has done here, what happens is that the Supreme Court has no power of review, because Congress said this is a very selective case, this can't be reviewed by the Supreme Court, only on a steamroller Seventh Circuit Court of Appeal's decision in a 60-day procedure.

What occurs then, unless this Court acts to stop the process in mid-air by a temporary restraining order and ultimately on a preliminary injunction, what happens is that this Estate, the Trustee, the creditors, are deprived, like any other citizen, of at least making an application to the Supreme Court to see whether the Supreme Court has something to say relative to what the Seventh Circuit has said about the constitutionality of the statute. As far as any harm to anybody else, if the order is entered here today, clearly there is no injury to anybody else, because this Court, if it makes an up-front determination relative to the constitutionality [15] of the Act, is subject to a review by the Seventh Circuit, is subject, as it should be,

to a review by the Supreme Court. So, how is anybody hurt? The Trustee, however, and the creditors, your Honor, are hurt by the steamroller, the headlong plunge into an early determination and early payment of a claim out of an estate where this Court has no right as a District Court in charge of the reorganization process all of these years, and still having so an exclusive jurisdiction over claims, has been effectively deprived of the adjudication problem to determine the claims, to determine their validity under the applicable sections of Section 77 of the Bankruptcy Act.

• • •

[23] [MR. MURRAY:] Your Honor, this matter this morning presents issues that are critical, not only to the Rock Island Estate, but I submit are critical in the course of legislation involving Section 77 of the Bankruptcy Act [24] and the Railroad reorganization proceedings, and also in terms of the evolution of the development of the case law under the Fifth Amendment to the Constitution respecting the relationship between the rights of private property and public use, and indeed we believe very critical issues are presented here by this extraordinary piece of legislation which has been enacted by the Congress and signed by President Carter into law on Friday, a week ago, May 30th.

This legislation purports to be Washington, D.C.'s response to the problems of the Rock Island. But, once again, I'm sorry to say, we find that Washington's solution to the problems of the Rock Island, and to the problems of Midwest railroads in general, turns out to be quite barren and really no solution at all.

Your Honor, at the June 2nd hearing on abandonment of the Rock Island I summarized the history of these proceedings, especially as they relate to the issue of labor protection, and I don't propose to cover that ground again. I do want to highlight what was said then and what was repeated again this morning by Mr. Manos, and that is that the Estate of the Rock Island has already suffered losses

of over $150 million between March of 1975 through the summer of 1979, and that those losses had the effect of preserving the jobs of Rock Island [25] employees for four and a half years. I want to repeat, or highlight again the fact that during all of this period the Trustees made valiant efforts to effect work changes and productivity improvements that were met with resounding rebuffs from the Labor Unions, and that despite the Trustee's critical cash shortage, BRAC and the UTU struck the Rock Island in August of 1979, thereby causing the Trustee to become cashless. Despite a Presidential Order, back to work order, BRAC and the other Unions defied the clear mandate of the Railway Labor Act and refused to order their members to return to work, and the Government of the United States failed to do anything to enforce that back to work order. Even when directed service was ordered by the I.C.C., the I.C.C. and the Government bent to the demands of labor unions who insisted on bringing back all the employees to work, even though they weren't needed, at the onset of directed service, and this at immense expense to the Government and to the taxpayers. Indeed, Rock Island employee jobs were preserved for another eight months at a cost of $70 million to $80 million. That's just the factual background that really precedes the enactment of this legislation.

Well, today we are faced with a new initiative by the Government in which railway labor is [26] given new rewards for their conduct in these proceedings. I think it might be useful just very briefly to review the course of this legislation. The matter was first broached in the Congress earlier this year, really in late winter. At that time the creditors and the Trustee visited Washington, D.C., and we voiced our willingness to the Senate Committee and to representatives of the House to arrive at a constructive legislative solution for the Rock Island problem. We offered to meet with anyone at any time at any place to resolve the difficult problems that are faced by this Estate and by Mid-

west railroads in general, and I repeated that offer in this courtroom, your Honor, at several status reports. Unfortunately, apart from one meeting which the creditors and the Trustee had the Department of Transportation, we received no significant response to our efforts to work out a constructive solution to the Rock Island problems. There was one exception, and that exception was the staff and the members of the Senate Commerce Committee, who I believe tried hard to work out a solution and, unfortunately weren't able to do so, because the fact of the matter is that political exigencies in an election year prevailed over good sense and the establishment dictate of our Constitution.

So, your Honor, we are faced with the [27] Rock Island Employee Assistance & Transition Act, whose constitutionality is being tested today. In essence, that Act provides for an immediate taking of $75 million as a prior claim on the Rock Island Estate that will displace the interests of the creditors and the shareholders, and that claim on the Rock Island Estate exists today as a result of the enactment of the legislation. What is so unusual about this legislation is the impact that it has on private property, and that is the reason why I think it is so critical in the history of the relationship of private property and public use.

I think we are all accustomed in an election year to efforts to appropriate large sums of hard-earned taxpayers' money from the public till to fund politically opportune projects, the proverbial legislative pork barrel. But, what I think is so extraordinary, and I submit also deeply troubling about this legislation, is that it seeks not to tap the public till, but private property, so that the [A]dministration and Congress can win the favor of labor unions in an election year, and it's that kind of abuse of Government again which the Fifth Amendment is designed to protect.

We have in this country an elaborate welfare and unemployment scheme to assist those unfortunate workers who suffer a loss of their jobs. Here, though, [28] we have a

special form, an extraordinary form of unemployment compensation far beyond what any other American worker in any other industry is entitled to receive. And why? Because the Congress as we see in the findings to the Act, the Congress has determined that the Rock Island services are essential to Midwest rail transportation and the Midwest economy, even though, in the last five years, neither the Administration nor the Congress has been willing to put any significant sum of money into the Rock Island Estate to preserve the Rock Island operations in the Midwest.

Then Congress states the findings in the preamble to the Act, the lynch pin of their whole reasoning:

> "Uninterrupted continuation of services over Rock Island Lines is dependent on adequate employee protection provisions covering Rock Island Railroad employees who are not hired by other railroads."

We have two groups of employees we have to consider here. One is the Rock Island employees who will be employed by other railroads who will acquire lines of the Rock Island, and it's those lines that are acquired that really are the lines that are essential to the national interest. The lines in which other railroads have expressed an interest are those. They are not covered by this Act, they are covered by the Miami [29] Accords that were voluntarily entered into by the acquiring carriers and the Labor Unions. Then we have the employees who are not or will not be hired by the acquiring carriers, those who will lose their jobs when directed service ends. Regrettably, they are surplus, their services are not essential, they are superfluous. That is why they do not have a job with acquiring carriers, and they are the employees the Act, by its own terms, protects.

A comparable example, your Honor, I submit, would be if the Chrysler Corporation went out of business, then Congress said that our national automobile industry was

essential to the national economy, we have to keep Ford and G.M. in business, so we pay off the Chrysler workers to preserve their—to give them employee severance. It doesn't make any sense. There's only one way in which I can understand the Congressional finding, and that is that Congress is afraid that unless they provide for protection for former Rock Island employees who do not have a job with acquiring carriers, they will face a strike by those employees who do have a job with acquiring carriers, and I think there is ample evidence of that. There is a report in the April 7th, 1980 edition of Traffic World in which Mr. Fred Kroll, the President of the Brotherhood of Railway Clerks and Chairman of the Railway Labor Executive Association is [30] quoted as saying that there will be a strike not only over the Rock Island, but over all carriers operating over Rock Island Lines unless there are assurances that the legislation will be enacted. Mr. Kroll says that labor will, "Take every legal means to protect our people." He added that, "The [*sic*] Rock Island employees are deeply upset, they may take the law into their own hands. That may mean violent action or vandalism." Mr. Kroll went on to say, "Not only will the service over the Rock Island be in jeopardy, but so will the service of other lines coming in to operate Rock Island Lines." Then he says, "Everybody got what they wanted, the shippers got their service, the railroads got new business and routes, the Government got its orderly transfer, the only ones who didn't get what they wanted were labor. I can't visualize those people sitting still for that." And then he said, "We won't have to call a strike, the Rock Island people will fan out across the property and halt the other 17 roads. We're losing the handle on this situation."

Your Honor, I think this is the sense in which the Congressional finding should be understood. If the former Rock Island employees who do not have a job with acquiring carriers do not receive labor protection, that there is going to be a strike, that is the threat, and once again, this

Government and the Rock Island Estate, [31] against its will, is going to be held hostage by the Labor Unions. This Estate should not be compelled to pay protection to labor unions that are responsible for its demise, and that is precisely what is happening here. It's clear from the Congressional Record that some members of Congress were clearly troubled by the constitutionality of this legislation, and well they should have been, given this background. Senator Kassebaum's remarks, and it's reported in the May 22nd, 1980 Congressional Record at Page 5806:

> "Although all the funds will be considered a claim of the administration, I'm pleased to note that the House conferees agreed to language which insures that this legislation will not result in an unconstitutional taking against the Rock Island Estate. Creditors of the Estate will still maintain the right to argue the question of the existence of labor protection. However, it's important to note that regardless of the disposition of the validity of the labor protection responsibility of the Estate, Rock Island employees are guaranteed their labor protection entitlement."

Your Honor, we do not understand Senator Kassebaum's remarks. We think it's clear that the Congress was concerned about the constitutionality of this [32] legislation. They obviously thought that there had to be some appeal, we understand that an earlier draft of the legislation, in that earlier draft that no appeal was provided for at all. But, it's clear, as Mr. Manos pointed out, that what we have here is a very accelerated process of appeal and it suggests the uncertainty that the Government itself had about the constitutionality of their own legislation. We think their doubts are well founded. Even if we were to concede that a valid public purpose is served by this legislation, a Fifth Amendment taking is still committed by the Government, because it's an uncompensated taking of private property for public use.

The Act is very clear, that there is no liability on the part of the United States Government for the labor protection claim that is going to be imposed on the Rock Island Estate, and therefore there can be no compensation under this Act for the taking that will occur. As Justice Holmes stated in the landmark case of Pennsylvania Coal Company versus Mann, 260 US 393, the general rule at least is that while property may be regulated to a certain extent, if regulation goes too far, it will be recognized as a taking. It may be doubted how far exceptional cases, like the blowing up of a house to stop conflagration, and if they do go beyond the [33] general rule, whether they do not stand as much upon tradition as upon principle, in general, it's not plain that a man's misfortunes or necessities will justify his shifting the damages to his neighbors' shoulders. We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.

In other words, if the Congress is concerned that there will be a rail strike as a result of the failure to make protection payments to the Rock Island employees, if that is a national concern, that burden should not fall upon the Rock Island Estate, that burden should fall upon the public treasury, even if it be sound public policy, which we dispute, that burden should fall upon the public treasury and not on the pockets of the Rock Island creditors and shareholders.

The plain fact of the matter is that this Court has ruled that the Rock Island no longer has a common carrier obligation to conduct rail services, that indeed the moment of constitutional taking has come, and that, in the words of Justice Holmes in the Brooks-Scanlon case, a carrier cannot be compelled to carry on even a branch of business at a loss much less the whole business of carriage. If the plaintiff be taken to have granted [34] to the public an interest

in the use of the railroad, it may withdraw its grant by discontinuing the use when that use can be kept up only at a loss. The fact of the matter is that this Court has ruled that the Rock Island Estate is now entitled to cease its rail operations, that the creditors and the shareholders are now entitled to withdraw their capital and their investment in this railroad, and that money therefore should not be expropriated for public purposes, whether valid or invalid.

Your Honor, our concerns are not simply limited to the $75 million labor protection obligation that is imposed upon the Rock Island Estate. We also have very serious concerns about the extensions of directed service that are provided for in this legislation, including a two-year extension of directed service over the Rock Island Commuter Lines. We are also concerned about provisions in the Act that preclude downgrading of the Act, and we note in our brief some of the problems in the draftsmanship of that legislation and precisely what is involved there, but the plain fact is that this legislation, in its total, in its entirely, has the cumulative effect through the $75 million labor protection imposition, through the extensions of directed service, through the prohibition on downgrading and abandonment of lines, it has the cumulative effect of impairing the [35] ability of the Trustee to dispose of the Rock Island Estate, and that is why there is irreparable harm to the Rock Island Estate from the moment that the legislation was enacted, and it continued today and it continues to accelerate with each passing day.

Now, your Honor, we submit that wholly apart from any concern about the I.C.C. action, a temporary restraining order and a declaratory judgment and a preliminary injunction have to be entered today because of this Court's responsibility as a reorganization Court under Section 77 of the Bankruptcy Act.

Your Honor, as the Supreme Court indicates the earlier Rock Island reorganization in Continental Bank versus

Rock Island Railroad, 294 US 648, Courts of Bankruptcy are vested with such jurisdiction of law and equity as will enable them to exercise original jurisdiction in bankruptcy proceedings. They are essentially courts of equity, and their proceedings inherently are proceedings in equity. The power to issue an injunction when necessary to prevent the defeat or impairment of its jurisdiction is therefore inherent in a Court of Bankruptcy as it is in a duly established Court of Equity. Section 262 of the Judicial Code, which authorizes the United States Courts to issue all writs not specifically provided for by statute, which may be necessary for the exercise of [36] their respective jurisdiction, recognizes and declares the principle, and, your Honor, we submit that this is essential in this case, because the Trustee at this point is now under conflicting obligations. This legislation which we submit is unconstitutional, compels the Trustee, on an extremely accelerated schedule, to implement the labor protection program set forth in the Act, and it compels the Trustee to continue directed service and it precludes the Trustee from downgrading various operations, all in conflict with the instructions of this Court to its Trustee to liquidate the Estate as rapidly as possible because of the dictates of the Fifth Amendment as expressed in the Brooks-Scanlon case and is embodied in this Court's order earlier this month.

Your Honor, we submit that you have jurisdiction sitting as a reorganization Court under Section 77 of the Bankruptcy Act to enter an order containing instructions to the Trustee declaring the Act unconstitutional and making it clear that this Estate cannot be burdened by the imposition of labor protection and the imposition of other burdens that will restrain the expeditious liquidation of this Estate that is constitutionally required.

Your Honor, we urge the entry of the order which we submitted to your Honor last Thursday.

THE COURT: Mr. Kaplan.

[37] MR. KAPLAN: Your Honor, I'll try to keep this very brief. We believe that the Rock Island Act is a classic example of election year legislation. It's an act which we believe is invalid on its face, but was passed for one purpose only, for Congress to be able to say that it confronted an issue and tried to do something about it. It's difficult for us to believe, however, that Congress, if it thought about constitutionality at all, really believes that this Act can pass constitutional muster. We believe that this Act not only violates clearly the provisions of the Constitution which indicates that Congress can only pass uniform Acts of Bankruptcy, but also clearly violates the Fifth Amendment prohibition against uncompensated taking, imposes a new obligation on the Estate which never existed before, and which this Court clearly indicates doesn't exist as of a week ago. It does so through a mechanism which has already been declared invalid and unconstitutional in this Circuit and in other circuits. It tries to impose a fourth borrowing on the Trustee to be imposed by the Court on a railroad which has been found to be unreorganizable. In also does this by imposing procedures which clearly violate due process and separation of power's doctrine. It orders this Court to impose any labor protection arrangements which the I.C.C. desires to impose, whether [38] rational, whether constitutional or whatever. It orders that there is no stay of either the I.C.C. order of this Court's order which must be imposed. It seeks to limit review and it limits compensation to the Estate.

Now, your Honor, finally this Act seems to try to effect a limitation on the Rock Island and the Trustee's right to dispose of property and to liquidate the assets of the Estate which this Court has already ordered.

Now, your Honor, in effect, we believe that this Act attempts to steamroll through a Congressional result on the Estate, and that this very steamroller aspect to the legislation mandates that the Court immediately enjoin the

Act. We believe that the momentum which legislation tried to impose, short timetables, by allowing no stay, by allowing no review, is something which has to be stayed and stemmed right at this moment before it gets into operation.

We also believe that it's unfortunate for the Trustee to be put into a position to have to choose between loyalty and his fiduciary obligations to the Court, and it would seem to me his various obligations under this Act. We believe that the Act will effectively hinder the liquidation effort of the Trustee, of the Estate at this moment, put them in a standstill, and as the [39] I.C.C. order, which Mr. Manos discussed earlier, requiring the Trustee to answer a laundry list requested by the I.C.C., indicates the Trustee's efforts will have to be directed and diverted to enforcement or to adherence to the legislation at a time when his efforts should be directed to the liquidation process.

Also, your Honor, we believe that that order immediately confronts this Court with the question of its jurisdiction versus the I.C.C.'s jurisdiction. The Trustee, under that order, seems to have four or five or six days to file something with the I.C.C. If he does, that may constitute submission to the I.C.C.'s jurisdiction, which we believe is totally improper under that Act, and we believe that the Court should immediately address that jurisdictional problem. Thank you, your Honor.

THE COURT: Mr. Moritz, are you going to add to those remarks?

MR. MORITZ: Yes.

THE COURT: Go ahead.

MR. MORITZ: I will be brief, your Honor. Most of what I have to say has been adequately covered by those counsel for the Trustee and the creditors who have spoken before me, and are contained in the joint memorandum that was submitted this morning.

[40] I might also say, your Honor, that on behalf of the First Mortgage Bondholders, we submit that this Act would create an interference with contractual rights that we have presently without any offsetting benefits to the Estate for all of the reasons that have been demonstrated in the presentation to you and are set forth in the briefs which support the fact that this is an unconstitutional taking. We had that as an additional reason for the Court setting this Act aside.

Your Honor, I think it's appropriate for us to clearly understand what Congress is doing with this legislation. On June 2nd, as the Court well knows, we had another in a series of orders entered by this Court which clearly established the principle, that the Rock Island Railroad, as an operating entity, should be out of the business of providing rail service. The Interstate Commerce Commission, as recently as last week, corroborated the Court's judgment and said it was in the public interest that we stopped bleeding the Rock Island Estate. There, I think, can be no question that were Congress to direct this Court to continue to permit the Rock Island Estate to operate until it had lost an additional $75 million, that that law would conflict with the due process provisions of the Fifth Amendment, and that law would be set aside by this Court because such a law would require [41] a violation of Brooks-Scanlon rights, rights that we have already established exist in this situation.

The piece of legislation that Congress passed does precisely that, your Honor. Congress said that it is in the public interest that the Rock Island continue to operate, and that is contained in Section 102 of the Act. Congress said in 102 of the Act that the obligation to keep operating, or the requirement to keep operating will only be met if labor is served. Congress then provides $75 million of Rock Island assets to serve labor, and Congress attempts to prevent the Government from being libel for that $75 million

taking by way of attempting, under Section 110 of the Act, to limit the Government's exposure to what is set forth in the Act.

What is set forth in the Act is that the Government must get cost of administration in the loan that it gives to the Trustee to fund this Act. So, in one fell-swoop they have Congress, in essence, saying the Rock Island Estate must provide $75 million in order to achieve a national objective. That, we submit, your Honor, is simply wrong. It's a violation of law and it's a violation that this Court should stop and should stop now. I will not repeat all of the arguments made to you with respect to why it's appropriate for the Court to act at this time. We note Section 105 [42] of Title XI of the Bankruptcy Code which provides very clearly that the Court has the right to enter an order in aid of its jurisdiction. We think at least to the extent of $75 million, its jurisdiction is being impaired.

Your Honor, I have other comments, I will forego making them. I will end with one analogy, and it's a little lengthly, but in 1951, when the Korean War was going on, there was a risk of a steel strike, and the reaction to that risk was an order, an Executive Order issued by the President and directing the Secretary of Commerce to seize the steel mills. Steel mills went into Federal District Court in an effort to prevent that unconstitutional taking from going forward. Judge Pine, later affirmed by the United States Supreme Court, said as follows in granting that injunction:

> "As to the necessity of weighing the respective injuries and balancing the equities, I'm not sure that this Congressional requirement for the issuance of a preliminary injunction is applicable to the case where the Court comes to a fixed conclusion, as I do, that defendants' acts are illegal. On such premise, why are the plaintiffs to be deprived of their property and required to suffer further irreparable damage until answers to

the complaint are filed and the cases are at issue and are reached [43] for hearing on the merits. Nothing that could be submitted at such trial on the facts would alter the legal conclusion I have reached."

But, assuming that he was required to balance the equities, Judge Pine found in favor of the plaintiff. He then went on to say, "If I'm to consider the public interest for another viewpoint, I believe that the contemplated strike, if it came, with all of its awful results, would be less injurious to the public than the injury that would flow from a timorous judicial recognition that there is no basis for this claim to unlimited and unrestrained executive power, which would be implicit in a failure to grant the injunction. Such recognition would undermind public confidence in the very edifice of Government as it's known under the Constitution."

As I indicated, Judge Pine was affirmed by the United States Supreme Court.

I submit, your Honor, that the restrictions on the reach of executive power are also restrictions on the reach of Congress. The Constitution is designed to limit illegal congressional action, and it's designed to limit illegal executive action, and I submit that like Judge Pine, this Court should restrain the Act of Congress, The Rock Island Employment Assistance & Transition Act now. Thank you.

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[45] [MR. RUSH:] As a preliminary matter, I think it may be appropriate to clarify the Commission's report to you in connection with the abandonment proceedings. That report did not mean to suggest that the Court had no obligations to impose labor protection. There was no intention of repudiating the opinion of its general counsel, Richard Allen, to Senator Kassebaum. I think it's important that that be in the record. I think that that can clearly be derived from the second sentence of the Commission's decision referring to 17(a), which says:

"However, under that Section, the duty"—I'm sorry, the sentence before that, that New York dock protection is apparently mandated by Section 17(a) of the MMRA, which was the position in fact that the general counsel took with Senator Kassebaum. Thereafter, the Commission intended to discuss the options which would [46] have been available to it, although the language it used suggested or stated that they were options available to the Court. All I can say is that that was one of those matters resulting from the press of time in which the Commission had to respond. If necessary, that can be clarified by the issuance of a supplementary order.

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[47] [MR. RUSH:] It appears to the Government that this is a classic example of a case where restraint pending judicial action is not only unnecessary, but would be improper. The criteria for such restrain [*sic*] are well known, I have cases here I can cite for the Court, but I see no reason to extend this argument by citing a lengthy number of them.

The Government's position is that the plaintiffs bear a heavier burden whereas here they seek to enjoin the operation of a statute enacted by Congress, and not simply government action, whether it be executive or an order of the I.C.C. However, the showing that they have made, we submit, falls so far short of making even the most rudimentary showing, that this Court need not decide whether the burden is in fact heavier.

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[53] THE COURT: Thank you, Mr. Rush. Mr. Broadley, you're next.

MR. BROADLEY: May it please the Court, I'm John Broadley from the Department of Justice. I must admit, I'm sorely tempted to respond to some of the particular arguments that the counsel for the creditors and the Trustee have made rather out of turn. I think I'll resist the temp-

tation and confine myself to the rather orderly argument I thought of on the plane this morning.

It's my test this morning to speak to the issue of probability of success on the merits, and clearly on the short notice we had on this hearing, we are not really in a position to definitively dispose of the wide range of constitutional issues which have been raised by the plaintiff in this proceeding. We do have a few general and a few specific observations, however, which we believe do or are sufficient to cause doubt on the constitutional deficiencies perceived by the plaintiff.

Let me address first the general observations. These, to a large extent, intertwine with the question of whether the plaintiffs are threatened with an irreparable injury. This is a question which has been addressed by Mr. Rush. It's a duty of a court, this Court, in interpreting [54] and construing a statute, if at all possible, to adopt a construction consistent with the Constitution. In this case, by filing the declaratory judgment action, the plaintiffs have raised a number of constitutional issues outside the context of a specific factual framework. They presented the Court with a spector of constitutional issues which may appear quite different when presented in a concrete form.

If it's possible to deal with these issues, constitutional issues in the context of a well developed concrete situation, we believe the Court should await that developed situation. We have serious doubts whether the issues raised by the plaintiff at this time are ripe for disposition by declaratory judgment. Let me be more specific.

At this stage, it's not clear what type of agreement or arrangement the I.C.C. is going to impose under Section 106 of the Act. While it's clear that the maximum liability of the Estate under the Act is $75 million, it's by no means certain that a liability of that size will be imposed by the I.C.C., or that the I.C.C. will not count other benefits which

have been alluded to by Mr. Murray as contributing to the labor protection which is demanded by the Rock Island Act.

The plaintiffs have raised the possibility [55] of irreparable injury flowing from the implementation of the I.C.C. prescribed arrangement and in the event that money is paid out to numerous employees and under the procedures of the Act, if the Seventh Circuit subsequently modifies or rejects the I.C.C. arrangements, whether this spector will become a concrete problem will be known only when we see the shape of the I.C.C. order. I believe one of the true bases for the argument for an injunctive relief that the plaintiffs are making is that in the hiatus, while the Court of Appeals is considering the I.C.C.'s decision, money may be paid out pursuant to the I.C.C.'s order, which, as a practical matter, could not be recovered from the numerous individual payees if the Court of Appeals should hold that the whole process is deficient, constitutionally deficient. We don't believe that it's beyond the work of the I.C.C. to take this possibility into account, and I might point out that no funds will be paid out of this Estate, or no borrowed funds, no funds will be borrowed by this Estate prior to an order by this Court directing the Trustee to pay out those funds and to borrow that money.

We've no doubt that at the time the Trustee comes in, or the Government comes in, or the labor unions come in for this implementation order after the I.C.C. decision is before us, that if the Court perceives some [56] reasonable possibility that an uncompensated taking may occur, which the Court of Appeals cannot remedy in the 60-day hiatus in which the Court of Appeals is going to consider the manner that money is going to go out as a practical matter, and if the plaintiffs win in the Court of Appeals and the whole procedure is thrown out, I don't believe it's beyond the jurisdiction, I don't believe Congress intended to deprive this Court of the opportunity of shaping an order which avoid that constitutional deficiency.

Certainly, though, the appropriate time for addressing that issue is when we see the I.C.C. order and when the matter of implementation by the Trustee is brought before the Court.

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[58] [MR. BROADLEY:] The Rock Island has operated for many, many years, since at least the early 1930's, in an environment in which labor protection or the possibility of labor protection being attached to discontinuances of operation has been a possibility and the law of the land. Until this Court's ruling on June 2nd under Section 17 of the Milwaukee Road Restructuring Act, the [59] possibility was open and apparently the I.C.C. believes that the Act mandates that New York dock conditions could have been imposed on the Rock Island. The labor protection imposed under the Rock Island Act, these are considerably smaller than the New York dock and short line protection conditions which could have been imposed by the I.C.C. under pre-existing law, and they're certainly less than were imposed by Congress itself under the Regional Rail Reorganization Act and in connection with the restructuring of the Northeast.

The argument that somehow the Rock Island Act has suddenly imposed ahead of the liens of the first mortgage bondholders new obligations, I think that completely ignores the history of operations and the environment in which labor protection has been known to be an obligation which can be imposed upon railroads.

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[61] THE COURT: Thank you, counsel. Mr. Clarke, would you like to address the Court?

MR. CLARKE: My name is John Clarke, and I represent the RLEA in this matter. Before I address some of the points that were raised by Mr. Manos and then the creditors in this proceeding, I'd just like to direct your Honor's attention to a couple of procedural matters. First of all,

the RLEA has not received, until just this morning, when I borrowed a copy from the creditors, a copy of even the motion for the T.R.O. or the preliminary injunction and, as your Honor realizes from what has [62] just been said, or said earlier today, the 47-page brief that was filed in this matter was just filed recently and we didn't even get an uncorrected copy until a couple of minutes before the hearing began. So, as far as just the procedures right now before your Honor as to whether or this is even ripe to decide constitutional questions, we submit that the parties supporting the constitutionality of this Act certainly have not even had anywhere near an adequate opportunity to address the issues that are before your Honor today. Until we saw the motion and the brief, we had an idea of what the arguments were, but not really a knowledge of what they were.

Your Honor, I'd like to direct your Honor's attention to the third request in the brief, or the motion that was filed by the Trustee in this matter, and that's for a temporary restraining order and preliminary injunction restraining and enjoining the United States Secretary of Transportation—I'm sorry, the second one, an order directing the Trustee, William M. Gibbons, not to enter into negotiations concerning any labor protection agreement under the Rock Island Act, and not to implement any labor protection agreement under the Rock Island Act.

Your Honor, as the Act shows, it specifies at 106(a) of the Act, the Trustee was required during the first ten days, the Trustee may enter into an agreement [63] with labor to implement the purpose of Section 106. The National Mediation Board, which was, by the Act, required to give its assistance to the parties, set up several meetings. The first meeting was scheduled for Tuesday, June 2nd-June 3rd. The Trustee, on May 30th, notified the Mediation Board, on May 31st notified the Mediation Board that he would not be able to attend personally and not be able to have a representative on that day and asked for an ex-

tension until this Thursday, June 5th. The meetings were put off until June 5th. They were held on the 3rd and also rescheduled to June 5th. On June 4th, the Trustee sent a telegram to the National Mediation Board saying that he was constrained not to attend the meeting, the negotiating session of June 5th. Another meeting was scheduled to be set for today, and it's my understanding has been set for 11:00 o'clock this morning in Washington, D.C. The Trustee has informed both myself, on behalf of the RLEA, and other parties, that in light of the unconstitutionality, in his opinion, of the Act, they would not participate in the negotiations.

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[68] [MR. CLARKE:] So, what we have here, your Honor, we submit, is there are two possibilities for this Act to be upheld. One is the uniform bankruptcy regulations and the second one is the Commerce clause of the Commerce power of the Congress.

Now, we'd just like to echo a few points that Mr. Broadley raised and then touch briefly on irreparable harm in this case. As Mr. Broadlay has indicated, and as we're sure this Court is well aware and the creditors are well aware, the issue, the whole concept of treatment of employees has been something that has been a familiar and integral part of railroad operations for years and years in this country. Any creditors, any investors in a railroad enterprise, invests and places his money into that venture with the clear and pure understanding that the interest of employees must be taken into account if there is an eventual
of the railroad enterprise. There have been several cases decided by the I.C.C., when it had discretionary powers to impose or not impose the protection [69] and abandonment cases, where the I.C.C. included that in an entire line of abandonment, it would not impose protections. However, they were always short lines, and any time the I.C.C. considered a large abandonment, a large reorganization, it invariably stated the fact that you could not leave that

many employees unprotected. To do so, if that was done, if those employees were left unprotected, the I.C.C. has noted, and particularly I direct your Honor's attention to the Penn Central reorganization, which is reported at 347 I.C.C. 45, and I believe around Note 21 is the particular part of that decision that bears on this, that if the Commission or if Congress left that many employees unprotected, the results upon our entire national transportation system would be devastating. The railroad worker is a unique breed, he is basically a career employee who has devoted his entire working life to railroading. It's a unique skill that is not transferable. Congress recognized that, we submit in not only this Act, the Rock Island Transition Act, but also in the Milwaukee Railroad Restructuring Act, because in its declaration of intent in Section 3 of that Act, 2 or 3 of that Act, the Congress specifically noted the fact that it's important to the national interest that trained and expert railroad workers remain in the railroad enterprise, and the railroad industry, and it [70] was partly for that reason that the Milwaukee Restructuring Act was passed. It was also for that reason, we submit, that the Rock Island Act is being passed, that it's important that these men be allowed to try to get into railroad work, to keep in railroad work.

At the present time there are 8700 Rock Island employees. It was estimated in one of the exhibits attached to the I.C.C. recomended decision and the abandoment, it was recommended that approximately 70 percent of those employees would be able to find jobs in the acquiring lines. That estimate was made February 1st or earlier of 1980. It has since been revised downward, and there are substantial numbers of employees that unless they're protected, they will be forever lost to the railroad industry. Also, those employees that have been able to find jobs are only in interim operations, which is a very nebulous type of position, and they can be without protection. So, therefore, it's important to the entire railroad system in this country

that the Rock Island employeees be treated justly and fairly, that is what the Lowden Doctrine was based upon. The Supreme Court in that case, which Mr. Broadley cited at Pages 235 and 236 of that decision, stated that when the demands of justice are ignored, the morale and efficiency of railroad workers suffers, and it's contrary to the national [71] interest to allow something like that to occur.

Now, this brings us into the argument made by counsel that in this case there is no more public interest concern in this Estate, because the Estate has been authorized to be abandoned, so therefore the creditors could care less about what happens to the rest of the country, about what happens to the continuation of the rail system. We submit, your Honor, that that's not the law of this land, and Congress has a very strong force, a very strong interest in preserving the public interest. In Ecker, in the Supreme Court Case of Ecker versus Western Pacific, the Supreme Court noted the fact that when the public interest considerations loom great in a particular matter, the solution is largely a function of the legislative and administrative agencies of the Government. That is what we have here, Congress has mandated a solution in this problem. It recognizes the public interest factor that still remains, there's still service going on, and that service is still essential to the Government, to the nation and it's important that that continue. When Congress realizes that if the employees are not treated fairly, not only would future railroad workers, the pool, the supply of future railroad workers be lost, but the present supply, the present efficiency and the present morale would be hindered. That is one [72] of the irreparable harms that can occur in this case if your Honor grants the injunctive request that is being asked for in this matter, that if this matter is held up, it will be held up hopefully for a short period of time, but it will hold up the whole process that Congress has mandated be expedited as quickly as possible, it will be delayed while a preliminary issue in resolved.

I would also direct your Honor's attention to the Congressional Report on Section 106, the discretion of Section 106, and in that report Congress specifically indicates when it was talking about the timing and everything of the speed of the decisions, that it's important that the payments be made forthwith, that the compensation, the assistance be available to the Rock Island employees as soon as possible. Therefore, one of the public interest considerations in this matter, which is the fourth test on the injunctive issue, has already been decided by Congress that it's in the public interest that this matter be continued as speedily as possible.

Now, balanced against that we have the question of the harm to the creditors, the harm to the Estate. What is the harm to the creditors in the Estate from allowing an administrative process to continue? There is no harm, except that this Court might not have as great a say in the constitutionality of the Act that [73] it would have otherwise. That's the harm that they're afraid of. The Congress has said that the Court of Appeals is the one to review any kind of administrative decision by the I.C.C. and not this Court. That is really the harm that they're afraid of. They do not want to allow your Honor to leave the realm of making a decision in this matter.

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[74] THE COURT: I don't think a response will be necessary, in light of the time, as we've gone well into the lunch hour. I have a matter at 2:00 o'clock that will take all afternoon. I indicated at the conclusion of the argument I would indicate my ruling on the application filed by the Trustee and the creditors this morning, it's my intention now to do so, if I can get the many notes I made in some form of order.

It's of no news to anybody here interested in this case that for well over four years, closer to five years, I guess, I have been trying to balance the public interest against the rights of the creditors, that I have sanctioned the con-

tinued operations of the Rock Island towards the end of an anticipated an [*sic*] hoped for reorganization. Events indicated down the line, and I accepted as inevitable, the fact that that effort had and would continue to fail, and therefore recently, in view of that conclusion, I ordered the termination of operations and the abandonment of the Rock Island operation. The Commerce Commission agreed with me, and after hearing that, I entered the final order, and we do not now have before us, for any consideration, an operating railroad.

The basic thrust and historical mission of the Commerce Commission is to oversee the operations [75] of railroads, not their liquidation, and to oversee the terms and conditions in this case of contracts entered into with other railroads to continue to operate segments of the Rock Island, if any such agreement is reached. This jurisdiction, however, is basically over the new operating entity, the Rock Island not being an operating entity.

I have before me today an application for a declaratory judgment that has to do with a statute recently enacted and an attack upon its constitutionality, and in argument there has been adverted to, and I have in front of me, the text of the preamble to that statute, the Rock Island, Section 102, and the preamble indicates the pursuit of Congress of the interest of seeking the uninterrupted continuation of services over Rock Island lines, dependent as it is, and I'm not reading, I'm paraphrasing, an adequate employee protection provision, covering Rock Island Railroad employees who are not hired by other railroads.

There is in that, and the following three paragraphs of the preamble, a basic illogic, a basic contradiction which I'm at a loss to understand. What the statute addresses itself to is labor protection for those employees who will not be absorbed by whatever [76] segments of the Rock Island are continuing to operate, and therefore the purpose of uninterrupted continuation of services over Rock Island

Lines, as part of the preamble to this statute, remains to those persons arguing it, and to me, something of a mystery. The important thing to remember is that whatever public purpose and public interest there remains in this case is the problem of the other carriers and the Interstate Commerce Commission and the on-going supervision by the I.C.C. of the operations of the other carriers over Rock Island Lines that they may have acquired. But, the Rock Island is a bankrupt corporation with no more operations, nothing left but assets and creditors and liquidation. Whatever obligations it may have to labor, it must arrive out of a contract that it had with labor, and any appropriate claims of labor under existing bankruptcy law is under the Railroad Retirement Act or any other statute which operates to fix the rights of labor. There are pension rights, I assume, there may be wage claims that can be resolved. But, these are all based upon existing law, existing rights, existing contracts, and that Congress believes that it can legislate a $75 million labor protection burden on the assets of the Rock Island comes to me as a startling concept. That the Government will lend or the FRA will lend the $75 million is irrelevant [77] in the face of the fact that obviously that becomes a claim against the Estate in derogation of the rights of the creditors in whatever assets the Estate now has.

I'm not aware that it has ever been held that Congress can single out a private industry in bankruptcy and legislate for this single company only labor-management rights. I'm aware that in the Milwaukee Act something of that nature seems to have been done. I'm not sure that I agree with Judge McMillen and his conclusions, but neither do I disagree, because his situation is so different than the one before me that I don't find it analogous. The Milwaukee continues to operate, the Milwaukee has problems the Rock Island doesn't have, and the Milwaukee is in a situation the Rock Island is not in.

It seems to me clear, without the necessity of a great deal of argument, that the Rock Island Act, which is the subject of our deliberations today, is an unconstitutional taking, an unconstitutional deprivation of the property rights of the creditors. It seems to be thus in two respects at least, and probably more, but the labor protection aspect of it, which has been argued today at some length, and in addition, the curious procedural deprivation of the ordinary rights of adjudication and appeal of decision affecting the property [78] rights of creditors in a bankruptcy case.

The labor protection scheme, however, is central to the legislation, and its infirmities are sufficient basis for the ruling that I intend to make today. But, while this is true, there are other aspects of the legislation that I have adverted to of dubious constitutionality. One I have mentioned is the strangely trunkated appellate procedure. The second, including the deprivation of the Trustee and the Court and the creditors of their control over and their rights in the Commuter Service for the extended period of two years. This and other problems remain for further consideration. However, and as I've said, the labor protection plan is the central issue of this morning's argument and this morning's determination, and it is enough to warrant the intrustion [*sic*] of the Court into this implementation of this statutory program on constitutional grounds.

I have no lack of faith in the ability of the Seventh Circuit to decide the constitutional issues here. My reservations, however, are as to the procedural anomalies which this statute embodies, setting the matter, apparently in the interest of speed and expedition, upon an exceedingly fast track, which puts a bankruptcy matter in the hands of the I.C.C., expert by definition only in terms of railroad operations, and bypasses the [79] Court which has the primary jurisdiction over bankruptcy matters. The Seventh Circuit, in any event, will review this matter one way or another,

and I would not wish it otherwise, but it will only be after an order of this Court barring the intent of this legislation to impose this significant obligation on a bankrupt estate with a statute by-passing the jurisdiction of the Bankruptcy Court in which the case is pending.

Let me comment for a moment on some of the arguments that have been made in opposition to the application of the creditors and the Trustee. Mr. Broadley and Mr. Rush have argued that it would be appropriate for the Court to let the Trustee respond to the I.C.C.'s request for information, allowing the Commerce Commission to thus formulate the issues and work out a labor protection plan which in the argument of Mr. Broadley, I think it was, might be acceptable to the Court and the Trustee. I know that was Mr. Rush's argument. It might even be much less than the $75 million, it might be $50 million or $25 million. The issues is [*sic*] not whether the I.C.C. can arrive at a labor protection plan which the creditors and the Trustee could live with, even if that plan were to cost the Estate only $1 million. The issue is whether ab initio, the concept of a compelled labor protection plan, paid for out of the Estate, [80] whatever the plan, has any constitutional sanction. We don't have to wait for an I.C.C. determination of the details of the plan to determine that issue.

Mr. Broadley has argued the Lowden case, the Old Rock Island case, a reorganized railroad continuing operations, and that, of course, that phrase, "Continuing operations," is the reason why the Lowden case is not applicable here. In its continuing operations after its earlier reorganization, those continuing operations invoked the continuing jurisdiction of the Commerce Commission. The uniqueness of the situation here is that the Rock Island is not a railroad corporation any longer, it's not an operating railroad, it's a corporation in the business of liquidating real estate and equipment and paying off creditors. The environment of labor protection decisions and precedent and all of the

Court's decisions and precedent flowing therefrom has always been the environment of an operating railroad, and that is singularly the environment we no longer have here.

Mr. Clarke argues that there is no more public interest, or there is no more public interest here because, at least within the discretion of the Court, because the legislature, the ultimate repository of decisions on public interest, has spoken and decided what the public interest is. If Congress sees public [81] interest, of course, Congress may serve that public interest by appropriate legislation which does so with public funds. One of the central issues in this case is and always has been and will be and will continue to be to what extent the private sector, here the creditors and the bondholders, can be saddled with the public interest. Congress may determine public interest, but Congress may not take private property to serve the public interest.

I find that we have an emergency here, there is irreparable harm to the Rock Island and the creditors if this procedure mandated by the Rock Island Act goes forward, that the probability of determination of unconstitutionality of this Act after more mature consideration and deliberations is exceedingly great, and that all the statutory and traditional requirements for emergency relief have been met. The emergency relief sought in the petition before me in Paragraph 1 is a temporary restraining order and a preliminary injunction restraining the Commission from asserting jurisdiction to consider or impose labor protection arrangements as provided by the Rock Island Act; an order on the Trustee not to enter into these negotiations as provided by the Act and requested by the Commerce Commission; and a preliminary injunction restraining the United States [82] Secretary of Transportation from going ahead with the statutorily authorized $75 million loan and consequent obligations on the Rock Island that would flow out of the making of that loan.

Because of the apparent unconstitutionality of this Act, I think this relief is warranted, and its effectuation and implementation must be enjoined, and therefore I will enter an order granting the prayers for relief that I have just summarized in the petition of the Rock Island Railroad, Trustee and the creditors. This is a preliminary injunction, I see no need for a temporary restraining order. I think in the issue of constitutionality of an Act, which we can all read and argue, a temporary restraining order is not necessary and a preliminary injunction is the order I intend to enter. This, among other things, opens the avenue of appealability, which I think is probably desirable in this case.

I will continue the matter for further argument and further report on the preliminary injunction and for a determination of whether, after I hear whatever additional you have to present, it should be transmuted into a permanent injunction, a final injunctive order and will grant some time for that. I would expect, however, that before that time there will be a movement in the [83] direction of the Court of Appeals, which is why I have made it a preliminary injunction and an appealable order.

I think the way to finalize this is to draw an order which merely contains the prayers for relief in the plaintiff's motion for a preliminary injunction, which I have indicated I'm ready to grant, so I will merely dictate an order which will be available to you gentlemen before the end of the day embodying those three requests for relief and putting them in order form rather than in prayer form.

Is there anything further, gentlemen, that remains to be done?

MR. CLARKE: Your Honor, there's one matter, and that's a question of whether or not in light of the fact that there is no money needed from the Estate for the next 20 days at least, that your Honor will stay your order at this time

to allow the Interstate Commerce Commission to consider the issue under Section 106(b) of the Act.

THE COURT: Well, actually that's been the thrust of the argument, Mr. Clarke, and Mr. Broadley, Mr. Rush having argued that no harm will be done by the implementation of this Act, and I have not agreed with that, I don't share their views on the subject. I think that the Act is designed, despite argument to the contrary, to take jurisdiction over this matter away from the Bankruptcy [84] Court, that the Commission is to make its determinations appealable only to the Courts of Appeals, that I have no role in that and I think that's one of the unconstitutional aspects of the statute. It has been argued that when all of this has been done, the Trustee will have to come to me for an order approving whatever it is that the Commerce Commission has told him to do. I do not so read the Act, I don't think that's what it says, and therefore to grant your request would merely be to allow to go forward what I have just enjoined, and therefore I deny that motion.

Mr. Broadley, what——

MR. BROADLEY: I was just going to join him in a motion for a stay.

THE COURT: I'll deny the motion for a stay. Gentlemen, I'll get an order out as quickly as I can so all of you have something to go to the Court of Appeals with.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 75 B 2697

In the Matter of

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY,
Debtor,

WILLIAM M. GIBBONS, as Trustee of the Chicago, Rock Island and Pacific Railroad Company, Debtor; CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Indenture Trustee; THE FIRST NATIONAL BANK OF CHICAGO, as Indenture Trustee; and HENRY CROWN, ET AL.,
Plaintiffs,

v.

THE UNITED STATES OF AMERICA; THE INTERSTATE COMMERCE COMMISSION; and NEIL GOLDSCHMIDT, United States Secretary of Transportation, *Defendants.*

PRELIMINARY INJUNCTION

This matter is before the court on the joint motion of the trustee and creditors of the estate of the Chicago, Rock Island and Pacific Railroad Company. The trustee and creditors have filed a complaint for a declaratory judgment and injunctive relief declaring the Rock Island Railroad Transition and Employee Assistance Act ("the Rock Island Act") (a copy of which is found in H.R. Rep. No. 96-1041, —— Cong. Rec.-House, H3875 (May 20, 1980)) unconstitutional and enjoining its enforcement. The court has reviewed the complaint and motion and their supporting documents and memoranda. In addition, the court has heard arguments of all interested parties.

Pursuant to the requests for relief in the written filings and the arguments of counsel, the court made oral findings

from the bench at the conclusion of the arguments heard this day. Those findings need not be restated here. However, pursuant thereto, the court orders the issuance of a preliminary injunction:

1) preliminarily enjoining the Interstate Commerce Commission from asserting jurisdiction to consider or to impose any labor protection arrangement or obligation under the Rock Island Act; and

2) preliminarily enjoining the Trustee, William M. Gibbons, from entering into negotiations respecting any labor protection agreement and from implementing any such labor protection agreement under the Rock Island Act; and

3) preliminarily enjoining the United States Secretary of Transportation from requesting, approving or guaranteeing any loan or obligation on the estate of the Chicago, Rock Island and Pacific Railroad Company under the provisions of the Rock Island Act.

ENTER:

FRANK MCGARR
United States District Judge

Dated: June 9, 1980

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 75 B 2697

In the Matter of:

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY,
Debtor.

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled matter before the HONORABLE FRANK J. MC GARR, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Friday, the 20th day of June, 1980, at the hour of 10:00 o'clock a.m.

[3] THE CLERK: 75 B 2697, in the Matter of the Chicago, Rock Island & Pacific Railroad Company, Debtor, et al., versus the United States of America, et al. Defendant's motion to vacate preliminary injunction entered on June 9, 1980.

THE COURT: I turn my back on you fellows for one week and I get a thousand pages of briefs.

I'm ready to hear you, counsel.

MR. BROADLEY: Your Honor, I suppose the first thing I should do—for the record, I'm John Broadly [*sic*], from the Department of Justice, appearing here for the defendant United States and Neil Goldschmidt.

I suppose the first thing I ought to do is to explain why we're here on a motion to vacate on the preliminary injunction your Honor entered less than two weeks ago. The original motion was heard on the 9th and was noticed as a TRO motion, and we had a very short period of time to prepare for that matter. We filed no written arguments. Once your Honor entered the preliminary injunction, we

did some research on the question of appeal, and, lo and behold, it turns out that we would have to go to the Supreme Court rather than to the Seventh Circuit and we thought that if at all possible we should first attempt to prepare and file a memorandum in this Court, attempt to change your Honor's mind with [4] our arguments presented a little more fully than was possible at the hearing on the 9th, and to avoid bothering the Supreme Court, and also, frankly, to avoid the jurisdictional problems which could well result if this order is appealed to the Supreme Court. I believe Mr. Rush will address that in some greater length later.

At this time, I think I'll reverse the traditional route in a preliminary injunction, temporary injunction proceeding, and talk first about the plaintiffs' probability of success on the merits, and I'll try not to be too lengthy, because all of our arguments are set forth in the memorandum we filed.

THE COURT: I can assure you I've read it too, counsel.

MR. BROADLEY: While we're on that subject, your Honor, there are two errors, the memo was prepared, as you can imagine, in great haste. On page 8 the Supreme Court citation to the Bannercraft Clothing Case was ommitted [*sic*], and it's 415 U.S. 1, 1973.

THE COURT: All right, counsel.

MR. BROADLEY: And on page 12, the penultimate sentence, there's an obvious typographical error, the word, "enjoined" is written as "enjoyed."

THE COURT: All right.

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[7] [MR. BROADLEY:] With respect to the taking issue, I must confess, we did not go into this issue in our brief in the greatest depth, first, for the obvious reason there wasn't a great deal of time when we were preparing it, and sec-

ondly, because we think Congress quite clearly has committed this issue to the Seventh Circuit. But, the Plaintiffs here make the argument that Congress and the Rock Island Act has come in and imposed upon them a new obligation. Well, in 1920, the Transportation Act commended the Interstate Commerce Act to authorize the Commission to impose conditions on abandonments, and since the late 1930's the Commission did exercise the authority that Congress had granted it twenty years earlier to impose labor protection conditions [8] on abandonments and the exercise of this authority was sustained by the Supreme Court in Interstate Commerce Commission versus Railway Labor Executives [*sic*] Association.

The heart of the creditors' argument, it seems to me, is that somehow they have a property right or a protectable interest in the exercise of the discretion of the I.C.C., which was exercised in a number of small systemwide abandonments to impose new labor protection. It seems to us that the abandonment of the Tennessee Central, which I believe is a two-hundred mile railroad, and the abandonment of the eight-thousand odd miles of the Rock Island are not only quantitatively different, but qualitatively different. In the Lowden and I.C.C. versus R.L.E.A. case, the Supreme Court recognized the national interest, the Congressional interest in peaceful labor relations on the railroad and found that the Commission's exercise of its power under Section 120 of the Interstate Commerce Act to impose labor protection conditions was a rational Congressional legislation addressing something within Congress' power to regulate under the Commerce Clause.

The investors in railroads, since 1920, have known that in any abandonment, the possibility was there that using the discretion of the I.C.C., or later the discretion of the Court under the MRRA, or some other [9] specific legislation, that their investment in the railroad was going to be subject to the potential claim, or potential provision for

labor, for employees, exercised in the national interest, and that the Congress had the power and had exercised the power to insure that in cases of abandonment that the national interest and peaceful labor relations was not going to be ignored. So, contrary to their contentions, this is not a new obligation, this is a new quantification, and in fact it is a quantification that is perhaps much smaller than may be required, than may have been required under pre-existing law. Certainly it's a quantification that is much smaller than the labor protection obligations which would result if the New York Dock conditions were applied, and I believe Mr. Clarke here is in the Court of Appeals contending that they should be applied. But, we offer no views on the applicability of whether under the pre-existing law New York Dock was mandatory.

We get now to the second factor of granting a preliminary injunction, the public interest. Here our argument is quite simple. Congress thought that quick action was necessary. Congress thought that labor protection was necessary to facilitate the rapid, smooth sale of the essential lines of the Rock Island to other carriers, and we believe that when Congress has found that [10] when expedition is in the public interest, the Court should take into account and afford this factor substantial weight in determining whether to grant the preliminary injunction.

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[12] THE COURT: Thank you, Mr. Broadley. Mr. Rush.

MR. RUSH: For the record, Henri Rush representing the Interstate Commerce Commission. I have a very few brief remarks, most of which echo Mr. Broadley's.

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[14] [MR. RUSH:] So, basically, in summary, the problems we have are a frustration of the intent of Congress by [15] enjoining the preliminary aspects of the operation of the mechanism they created for resolving the labor protection issue, and, as is pointed out in my memorandum, and

I will not reiterate, the imposition of an unnecessary burden on the United States Supreme Court in the present posture of the case with the possibility of a jurisdictional legal Procedural nightmare being created as a result of review going on at the same time, both in the Supreme Court and the Seventh Circuit.

I'd simply like to say that my agency stands ready, willing and able to undertake the functions which were assigned to it under the Act by Congress. If your Honor were to vacate the preliminary injunction, we would be prepared to issue a new scheduling notice of the sort which I read portions of into the record at the last hearing, this coming Monday. The information wouldn't change, the date, obviously, would have to.

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MR. CLARKE: May it please the Court, my name is John Clarke, and I represent the RLEA, intervenor in this proceeding.

[16] Your Honor, we have filed, shortly before this hearing today, a memorandum and several factual exhibits which were attached to it as appendicies [*sic*], which we ask the Court to receive into evidence basically under Federal Rule of Evidence 803.8, namely official records, except for the affidavit, which even though it purports to contain matters from the F.R.A. files is in the form of an affidavit and therefore admissible in that sense.

THE COURT: I'll receive your filing with the attachments.

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[17] [MR. CLARKE:] We have shown, by the evidence submitted, [18] along with the exhibits in this case, that out of the 8700 Rock Island employees who were in the employ of the Rock Island in August of 1979, no more than slightly over two-thousand of those employees are presently working on the lines. What has happened to the remaining six-thousand employees? It's hard to say. Two-thousand seven-

hundred is what we're talking about, 2,641 to be exact. Two-hundred and forty-one are in the employ of the interim operators; three-hundred are in the employ of the KCT in its wind down operations, which are winding down rapidly, so they'll most likely be unemployed soon; and three-hundred in the employ of the Trustee himself. So, out of 8700 employees, approximately six-thousand of those employees have lost their positions, their lives, and it's those six thousand employees, we submit, that Congress was interested in when it enacted the Rock Island Transition Act, and it was for those six-thousand employees that Congress intended to perform some form of monetary assistance, one, to keep them in the railroad business itself, to keep their careers there, to keep their valuable—to keep that valuable body of people available to our nation's transportation service, and the secondly, to prevent the type of disruptions that unequal treatment of employees can create over the entire railroad system, especially in the economies of the states [19] that we're dealing with the thirteen states that the Rock Island engages in, and also the economies of the states of all those railroads that are now doing interim operations which will be effected if this thing blows up, as it's possible it could.

We have shown—or the Trustee, first of all, has argued that, well, there's a lot of protection for these people, there's $25.00 a day under Railroad Unemployment. We have given some statistics on basically how Railroad Unemployment works. Granted, for some people it can last for up to two years, a period of 26 weeks, 130 days at a time, 130 benefit days at a time. But we're talking about $25.00 a day, $250.00 every two weeks, which in a year is around $6,000 and some odd dollars, which is below the poverty level for a family of four in this country.

No one, we submit, who is making $15,000 to $20,000 per year prior to this episode can be expected to long survive on that amount of money for that period of time. We are

coming close to the end of the line, and we submit that it's important that this Congressional Act be implemented now the way Congress said it would.

Now, I direct the Court's attention to, as Mr. Broadley has indicated, to the Congressional [20] doctrine, which is quite clear, namely that the statute should be construed in a manner to make it constitutional if at all possible. There is also another doctrine that fits along with that, and that is that if you don't have to reach the constitutional issue to decide the matter, you should not at that point. And finally there's another doctrine that follows along from those two, and that has been stated several times by Mr. Justice Rhenquist [*sic*] in his in chambers opinions dealing with stays, statutes are presumptively constitutional, and absent some compelling equities on the other side, should remain in effect pending a final decision on the merits by the Court.

Now, those are the principles that apply to this case. So, the first question that really comes down, even besides the merits of the constitutional arguments, is that harm would occur to the Plaintiffs in this adversary proceeding if the statute is allowed to go foreward.

First of all, there's the possibility of an unconstitutional taking. Well, there's Appendix 'J', which is attached hereto, and also the statute will show it's basically impossible that this plan can be implemented in the time it will take for the Court of Appeals to decide the constitutional issues. There's a sixty day expedited appeal process in the Court of Appeals. In the Milwaukee [21] situation, the Milwaukee applied for a very similar loan, $75 million, under a federal guaranty and statutes that are almost word for word the same. They filed it on January 11th and on March 7th it was finally guaranteed and approved and the money was available for drawn down sometime in April—April 21st, to be exact. Actually it could have been probably drawn down shortly after the March 7th guaranty. But, you're

talking about a period of fifty-six days from the date of application.

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[23] The identical language used in 110(e) in this Act was used in 15(e) in the Milwaukee Railroad Restructuring Act. That is the language that can possibly be used to argue that The Tucker Act has been removed. Maybe it could be that the Tucker Act was removed in the Milwaukee case, but surely Congress knows that when Judge McMillen, on February 7th, said the Tucker Act is there and they used that same identical language, it's almost impossible to argue that the Tucker Act is now not available because Congress has to deprive the Court, or deprive the creditors of that remedy by a specific act, it is not done by implication.

The Tucker Act, we submit, is here, even if there was an unconstitutional taking, which, as we've argued in our brief which we submitted to this Court that there is no unconstitutional taking in this matter.

So, the claim about irreparable harm because of a taking just doesn't lie in this case, it's not here, and the matter of today, tomorrow or two weeks from now, or five or six months from now, it's just not present.

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[27] What we are down to, we submit, your Honor, is that the public interest, as in the Ecker case, bulks large in this case, and because of that, Congress has the perfect right to say how that public interest should be implemented and carried forth, and Congress has the perfect right to refer that implementation to the Interstate Commerce Commission. It has been upheld before in the Ecker case, in the Continental Bank case where the whole question of the constitutionality of the Bankruptcy Act was involved, and we submit it can clearly be upheld under the Commerce Clause of the Constitution. Whether or not this is or is not a uniform bankruptcy act, well, that doesn't matter, as long as Congress has the power under the Commerce

Clause, even if it violates the uniformity clause of the Bankruptcy Act, it's still valid, we submit.

But again, we come down to the final question. Where is the irreparable harm? If the I.C.C. did not have the authority to do it, the Court of Appeals can tell them they didn't have the authority to do it. If it's unconstitutional, surely the Court of Appeals, as well as this Court, would have the ability to find that out, and then during that time period, if there was any money paid out that was in error, the Tucker Act is there to help the creditors and the Estate make themselves whole.

We submit, your Honor, that as a result [28] of what has happened in the last two weeks, we have lost two weeks in the implementation of a plan, of an Act which Congress has said in its conference reports and its House Reports and in the Act itself, it is essential that this be implemented forthwith and not held up over litigation. There are remedies to help people if litigation does ensue, but in the meantime, protect that public interest.

This Court, we submit, is still the Section 77 Reorganization Court, it still has the role to, under 77, recognize the public interest. Congress has defined what that public interest is, and we submit this Court has a clear duty to allow that public interest to be implemented at this time and if there is an argument, then the statute provides procedures with which to correct it.

For that reason, your Honor, we submit and ask that the—we join the Government's motion that the preliminary injunction be vacated forthwith and that there be no further delay in this matter.

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[39] THE COURT: Does anyone representing the creditor's group wish to comment? Mr. Murray.

MR. MURRAY: Your Honor, I don't wish to burden the Court with extensive argument today, because I know

that your Honor has already heard the argument of the Trustee and the argument of the creditors at the last hearing held on this motion.

Your Honor, as I understand the crux of the Government's argument, they appear to contend that we have all misread the Act. The Act says, for example, that the labor protection obligation that's imposed on the Rock Island Estate will have administrative expense status, but the Government tells us, at page 8 of their brief, that the cost of the labor protection arrangement imposed by the I.C.C. would have administrative expense status if such status in such amounts are sustained by the Court of Appeals as a valid obligation on the Estate within Congressional power to impose. The implication is that indeed, the Court might rule contrary to the language of the statute that there is no administrative expense status.

The Act tells us that there can be no stay of the I.C.C.'s order imposing a labor protection arrangement and that the Reorganization Court must implement that arrangement forthwith. But again, the Government tells us, at page 9 of its brief, and as repeated in argument today [40] to your Honor, while the Court is precluded from staying the order of the Commission, and other Courts are precluded from staying the order of this Court directing the implementation of the I.C.C.'s arrangement, there is nothing in the statute which would require the Court to direct the Trustee to take any action which could lead to a taking of the property of the Estate. Again, the Act, by its own terms, precludes Supreme Court review, but the Government tells us, at page 25 of its brief, even if a substantial question were presented by the limitation on Supreme Court review, that question could be presented to the Supreme Court by a party taking an appeal of filing a petition for certiorari. And again, the Act precludes any liability on the part of the United States. In fact, the language is very specific.

The RLEA, at page 21 of their brief, argues that any payments in the interim from the corpus of the Estate, or course, would be recoverable under the Tucker Act if it is subsequently determined that the arrangement was unlawful.

Your Honor, Mr. Rush has adverted to what he calls Hornbook law, and we agree with this statement of the law, that the Court should attempt, wherever possible, to find an interpretation of an Act that is constitutional. But, your Honor, I must advert to other law on this case, and this is ennunciated by the Chief Justice in the case of T.V.A. versus Hill, and I think it's equally applicable. In that case the [41] dissenters argued that a certain interpretation of the statute that was far beyond any plain meaning of the statute, and the Chief Justice Burger stated that the Court would, "be forced to ignore the ordinary meaning of plan [*sic*] language" if it were to adopt the dissenters' position. And Mr. Chief Justice Burger explains further in language that I believe is equally applicable to the Government's interpretation here, and I quote, "Aside from the bare assertion, however, no explanation is offered to support the proffered interpretation. This recalls Lewis Carroll's classic advice on the construction of language," and Mr. Chief Justice Burger quotes, "When I use a word, Humpty Dumpty said in rather a scornful tone, it means just what I choose it to mean, neither more nor less," quoting from "Through the Looking Glass and the Complete Works of Lewis Carroll.["]

Your Honor, without in any analagizing [*sic*] Mr. Rush or Mr. Broadley or Mr. Clarke with Humpty Dumpty, I want to say that I think the problem they face is that they would like to rewrite the statute, because it is not defensible in the form in which it presently appears. Our position is that irreparable injury would occur if the I.C.C. exercised its jurisdiction to impose any labor protection debt on the Estate, because no debt can constitutionally be imposed,

and I believe that your Honor specifically adverted to that point in your opinion rendered orally.

[42] It's absurd to argue that no harm would or could result in the Rock Island Trustee's participation in I.C.C. proceedings. Mr. Clarke has specifically stated that the Act contemplates a two tiered approach. On one tier, implementation of the Act proceeds, and then on the other tier, an appeal proceeds. So, the fact of the matter is that implementation proceeds simultaneously and there is no assurance that monies would not be paid out.

The fact of the matter is, though, that during the period of the appeal of the Act, the Trustee would be under conflicting obligations, and we believe very firmly that this Court, sitting as a reorganization Court and a Court of equity under Section 77 of the Bankruptcy Act, has clear jurisdiction to issue an injunction in aid of the purposes of Section 77, and to instruct its Trustee as to what must be done.

The Government talks about there being a new debt, but this is not a new debt. The Government talks about quantifying an existing debt, but that is contrary to the facts and the law, as this Court has clearly held. This Court has held that on a constitutional basis, that no labor protection debt could be imposed under existing law.

We are not adverting, therefore, to any decisions by the I.C.C. that decide in the exercise of its discretion whether or not to impose labor protection. [43] This Court has held that the Rock Island has a right to abandonment, a constitutional right to abandonment without any preconditions, including any precondition of labor protection.

Your Honor, the Government has adverted to a line of cases concerning participation in agency proceedings which will be subsequently subject to timely judicial review. This is not such a case. This Act does not permit this Court to exercise its discretion in ordering implementation of an

I.C.C. order. It's required that the Court shall order implementation. It would thus be a ministerial act which might subject this Court to mandamus proceedings for refusing to implement the Act. Furthermore, once the debt has been imposed and the Government is right, Congress has destroyed Supreme Court review of a constitutional issue, then as soon as the I.C.C. exercises its jurisdiction, the Estate has lost its right to Supreme Court review, which it now has, and that lost right clearly constitutes irreparable injury.

Your Honor, with respect to the question of public policy, this Court has already decided that no labor protection obligation constitutionally may be imposed upon this Estate. The way for the Government to prevent any irreparable harm or injury to public policy through anticipated labor strife is to pay for labor protection itself. The Government has an interest in ongoing rail operations, and the public as an [44] an [*sic*] interest in ongoing rail operations, but the Rock Island itself is no longer a common carrier, it does not share that interest. Therefore, it would be an unconstitutional taking for the United States to impose on this Estate a charge to serve a public purpose.

We are very much in sympathy with those hard working employees of the Rock Island for many years who have lost their jobs, and it's a very sad event, and it's very sad to see that they no longer have any means of support, or very modest means of support. But, we are beyond the point where the Estate can be of any assistance to them. We were of assistance to them for five years in these reorganization proceedings, and at this point if they are to be helped in any way, it must be with the assistance of the Federal Government not with the assistance of private creditors.

We would strongly urge the Government to have concern for these employees and to provide them with some sort

of assistance, but again, it cannot come at the expense of the private creditors of the Rock Island.

Your Honor, for all of these reasons and for the reasons stated in the prior hearing, we would urge that your Honor not vacate your order entered on June 9, 1980.

Thank you, your Honor.

THE COURT: Mr. Moritz.

[45] MR. MORITZ: Your Honor, I think in the presentations and the briefs that the Court has heard, by representatives of the Government and the RLEA, we really have reached a high water mark of half truths and misleading arguments in this proceeding.

Turning first, and really only by example, because the volume of papers filed in the last two days really would require far too long and an unreasonable amount of time to refute the assertions that are made, but turning first to a statement made in argument by counsel for the RLEA, counsel's argument is that there's no reason for the Court to Act [*sic*] now because opportunity for the Court to act at some time in the future will be available, and counsel suggests that the procedural anomalies that the Court acting at this point creates such problems that they will create difficulties on review. Yet, at the same time counsel argues that in twenty days, when the Court is required to direct the Trustee to implement a labor protection arrangement imposed by the I.C.C., the Court will be empowered to act at that point.

I'd submit that the procedural anomolies [*sic*] that exist today, if indeed they exist at all, will exist in twenty days, and what counsel for the RLEA is simply trying to do is buy time to postpone the Court's recognition that this is an unconstitutional taking in the hope that once the procedure starts, no one will be able to retrieve it.

[46] Now, counsel for the RLEA also argues that it will take a long time to get this labor protection money out to these various employees. Well, I don't believe that's true. I think Mr. Manos did hit the nail on the head when he suggested that the Interstate Commerce Commission is prepared to move with incredible dispatch, and one must recognize that once a loan obligation is incurred by the Trustee, it has something called cost of administration status. We don't know as we stand here today what that means. We know at a minimum that some creditors are displaced, and so we face the prospect that on a very short time, something called cost of administration status in the amount of $75 million will be imposed on the Rock Island to achieve a public purpose. That, we submit, represents an irreparable harm.

Now, Mr. Clarke suggests that enough time will pass and the Seventh Circuit can decide that issue, or whatever issues he thinks are appropriate before the Seventh Circuit, and that those issues can be decided before payments are made. But, on page 4 of Mr. Clarke's brief submitted this afternoon, he quotes from the legislative history of this Act, and that legislative history says, and I'm quoting from Mr. Clarke's brief, "So that payments to Rock Island employees will be made forthwith, notwithstanding any ensuing litigation concerning such payments."

[47] Your Honor, the contradiction is apparent. On the one hand, counsel appears before the Court saying we have time. In his brief, he's saying the legislative history is such that immediate payment to these employees must be made.

I submit that if the Court lifts its restraining order, we are going to have Mr. Clarke and the I.C.C. before this Court attempting to impose the borrowing obligations long before the Seventh Circuit has a chance to rule, and that distribution of monies to these six-thousand employees will be made long before the Seventh Circuit has an opportunity to rule and that the creditors of the Estate will be put in a position of trying to argue the cost of administration

status doesn't mean that the Government has to be repaid out of the first dollars that are generated by the disposition of property in this Estate, and that that anomaly, that inconsistency in the statute, that inability to perceive where the statute will lead us represents irreparable harm, sufficient irreparable harm to justify this Court acting now.

If one reads Mr. Broadley's brief, one sees that even the Government doesn't understand exactly what this Act means. The brief is replete with representations that we aren't really certain what kind of labor protection should be imposed. It's replete with those kinds of assertions, your Honor, and I submit that the fact that those kinds of [48] ambiguities exist justify the Court's order of June 9th and justifies the Court's rejection of the contention that the preliminary injunction should be set aside.

Mr. Broadley says in his brief that there is a quantification of labor protection imposed by the Rock Island Employee Transition Act. But, your Honor, one can look through that Act in vain for any statement that says this is a maximum cap on labor protection obligations. There's nothing in the Act that suggests that this is an absolute quantification. It is a quantification of employee assistance under the Act, it does not forever limit Rock Island's obligations, and if this Court is reversed in its earlier ruling with respect to the imposition of labor protection under 11.346 and 10.943, I believe, there is still an opportunity for additional labor protection under the terms both of the Rock Island Employee Transition Act and under traditional labor protection.

So, the Government is misleading the Court in suggesting that this represents an absolute quantification. It does not. The Act has no representation to that effect.

Lastly, your Honor, we heard from Mr. Rush that the Government is frustrated in its intentions. Your Honor, the cases are legion that the Government acts under the terms of the Commerce Clause. The Commerce Clause and

the power of Congress is subservient to the rights of [49] individuals under the Fifth Amendment. That's where the cases are legion, your Honor. When the rights of the individuals, as protected by the Constitution, are impacted or interdicted by the acts of Government, then Congress is appropriately frustrated, because Congress has breached the Constitution, and when that occurs, then it's appropriate for a Court to act. That's the way the system is supposed to function. That's the way the system functioned in this case, and I submit that we have heard nothing today to justify the Court reversing its earlier order.

THE COURT: The circumstances of this case, in its leaping from crisis to crisis, which seems to be its history, has frequently compelled the litigants to come in, as they did earlier this week, and also as they did last week and today, in order to address emergencies where there is very little time involved, and that has necessarily compelled me to respond in kind, so that I'm constantly issuing opinions orally from the bench after listening to arguments of counsel and after a brief chance, usually overnight, to read some of the very excellent briefs that I've been supplied with.

It occurs to me that I should be embarrassed that every record that goes to the Court of Appeals, instead of presenting what I would hope to be my reasoned and literate opinion, is going up sort of off the cuff on findings and conclusions that the circumstances mandate. But, I guess [50] that's the way it has to be.

In order to illuminate, as best I can, the reasons for the ruling which I intend to announce on this motion, I'd like to make some general comments both on the background of the issue and the issues themselves as they're raised.

I did this the last time, I don't know how well it turned out, but, as I said, the exigencies of time are such that it seems to be the best way to do it.

I've heard a lot of reference today, and always in this case, to the public interest, and Mr. Clarke now argues that it was in the public interest to avoid the harsh consequences upon those terminated employees of the Rock Island which he sees implicit in my order. And it's the argument of the Government that the public interest, which lies generally in the capable hands of the Commerce Commission, is where the public interest should remain and that they should obey the mandate of Congress and implement the plan which Congress so obviously in the public interest wants them to do.

The creditors have listened to the public interest argument for five years and I imagine they grew fairly tired of it fairly early in the game, because, as always, I have tried in this case to balance the public interest against the private rights OF [*sic*] the creditors, and one must do that in a [51] case involving a public utility such as a railroad, and which one never does in any other type of a bankruptcy case because it's so extraordinary that it can be argued that the private right of contract can be effected by the public interest to the extent that it has been in this case.

But, the public interest has many aspects. There was always, in the long life of this case, a strong public interest in the continued operation of the Railroad. We came to a time in the case when even the Commerce Commission abandoned that, as did I.

There has always been an employees' interest. No court ever takes lightly the signing of an order, the issuance of an order that threatens unemployment of a very large number of people, so the employees' interest has been determinative and paramont [*sic*], and that combination of the public interest and the employees' interest gave the Rock Island five years of operation and the employees five years of employment, which had a different view been taken of the public interest vis a vis the creditors' interest, they might not have had.

As to the creditors' interest, which is contrary to the public interest in this case, we have reached that stage in the administration of the Rock Island where since it's no longer an operating Railroad, it's the creditors' interests that are now paramont [*sic*] and must be served.

[52] I'd like to characterize those creditors for a moment. We are tempted to think of the creditors in this case, because they have been active in the case as banks and bondholdres [*sic*] and so forth, but my desk is piled high with letters that I have been receiving for many, many months from small businesses and small taking authorities and school districts and from all through the Middle West and the area that the Rock Island serves, telling tales of extreme hardship that have been occasioned by the failure and inability of the Rock Island to pay its bills. These are not giants, they're not banks. They're people upon whom the hardships of the abandonment of the service of the Rock Island and its bankruptcy falls every bit as harshly as the same problems fall on the employees.

What I'm really trying to say, I suppose, is that everyone in this case, as is natural and as is human, approaches it from a single point of view, and I am charged with and have tried hard to see every issue in this case in the light of all of these interests and points of view which I have just discussed.

The statute that we're dealing with today, the Rock Island Transition Act, to give it a shorthand name, exudes concern for expedition, and it is in that atmosphere that this entire proceeding concerning it has taken place. We have moved rapidly, we have tried to do things rapidly and [53] set up possibilities of appeal rapidly for the reason that the issues are vital and important and all these interests are involved and rapid determination of what must be determined seemed to be in order.

In the order that is the subject of today's petition, I did not, in so many words, adjudicate the unconstitutionality

of the Rock Island Transition Act, although my remarks indicated that I certainly believed that it was probably that that would be the ultimate conclusion of the Court were we to go down the route to the final injunctive order. But, I did enter a preliminary injunction prohibiting its implementation on the grounds that we had a genuine emergency, that we had irreparable injury and that we had a reasonable probability of the plaintiffs' success on the arguments as to the unconstitutionality of the Act, in both its substance and in the procedures which it set up.

The unconstitutional aspect of the taking of private property to fund a legislatively created special benefits program for the terminated employees remains, in my mind, after all the argument that I have heard today, still the most single valid constitutional argument addressed to the Rock Island Transition Act. The Rock Island as an operating railroad was suffused with the public interest. But, the Rock Island as a non operating former railroad has lost that [54] character, and therefore, Congress their approach to it, to the public interest seems to me to misapprehend the [fact] that what they are dealing with is a private business with a lot of creditors which own some property and which is being liquidated for the benefit of creditors, and that it is not an operating railroad and that the public interest is no longer paramont [*sic*] and that the employees of the railroad, regrettable as it is, are former employees of the Railroad.

Among the rationals [*sic*] that have been developed to justify Government intervention into railroading over the years has been the public interest and peaceful labor relations, and the public interest in the necessity to keep an operating railroad operating. The operating railroad aspect is now gone as a factual basis for the interest of Congress, and if Congress had a sufficiently legitimate public interest in peaceful labor relations, as it asserts, and as it has been argued, as a foundation for what it has done, nothing

justifies Congress satisfying the public interest in peaceful labor relations by the taking of private property. The public interest, if it is a real public interest, must be served by public funds.

Mr. Clarke has argued that the money should be paid, the money provided by Congress and by this Act to come from this Estate, that it should be paid to the employees while the legal process goes forward [*sic*] and he argues that with [55] some considerable persuasion. But in truth, the argument that the funds, if improperly paid, are recoverable under the Tucker Act is a specious argument and if the money is paid to the employees while the legal processes go foreward [*sic*] and if the constitutionality of the Act, or my decision on it, was correct, there is no doubt that there has been irreparable harm to the Estate of the Rock Island.

Neither is it certain in my mind that as a matter of law that I have the final and total control over the disbursement of the funds, as the Government argues, and therefore, I cannot accept that argument as a reliable predicate for the Court's conclusion that there is no irreparable harm possible in this case, because ultimately I will have the last say as to the disbursement of the funds.

With everybody concerned with expedition and everybody arguing for speed, it seems to me that it doesn't matter very much whether the constitutionality of this Act, which is the basic issue we're all concerned with, is adjudicated in the context of an appeal from my order of a week or so ago, or, as Mr. Rush would have it, after the I.C.C. implements the order and the Rock Island comes to me for an authorization to disburse the funds, which I might be expected to deny if I had the same opinion on constitutionality then as I do now. Or, as Mr. Clarke argues, that after the I.C. [*sic*] implements the program and gets set to disburse the funds, that [56] if we handle the appeal expeditiously enough, we may get an order out of the Ap-

pellate Court before we get the money out of the Rock Island.

All of those programs and all of those paths lead to the same conclusion, and that is the absolute necessity in the present posture of this case for an appellate determination of the validity of my tentative preliminary conclusion that the Act we are discussing is unconstitutional, and in a pragmatic way, it seems obvious to me that the best way to handle that is in an appeal from the order which I have already entered. The fastest way to resolve it is also in that appeal, and I suppose that's why it's the best way.

It is argued, and the Government is understandably concerned that there is confusion as to where that appeal should go, do we have a Seventh Circuit matter, or do we have a Supreme Court matter. I must confess that the issue is confusing to me and I'm not certain, although I'm sure that you gentlemen have given it much more study and thought than I have.

This is a problem created, however, by the Act itself, as I view it, in its attempt to tamper with the ordinary appellate process, and I say that Congress having created this problem, it leaves me no avenue to resolve it.

In summary, I think since Congress desired expedition here, I have raised questions as to the [57] constitutionality of the legislative plan. The objectors say that there is no irreparable harm, and I disagree with them. If the Act is unconstitutional now, it will be no less unconstitutional after the I.C.C. implements its plan or after the funds are disbursed, if that's the way that it turns out, and I assume, therefore, that expedition is best served by an appeal from the order that I entered most recently and to allow the appellate determination from there.

So, with some considerable expression of sympathy for the employees of the Rock Island, and concern, and while I don't expect them to accept this, since nobody believes

that you tell them something they don't want is for their own good, that even from the employees' point of view the most expeditious course is the one that I have just described and I have just announced.

Therefore, the motion of Messrs. Broadley, Rush and Clarke, or the motion joined in by all of them to vacate the injunctive order of June 9th is denied.

I guess that leaves you on your way to whatever court of appeals you decide you're going to, gentlemen. At least I hope you stay in touch with each other so you meet in the right court.

That will be the order on today's hearing.

MR. CLARKE: Your Honor, would it be possible to just ask one or two questions for clarification?

[58] THE COURT: I'll do my best.

MR. CLARKE: Your Honor, am I correct in concluding that your Honor has concluded tentatively and it's that finding, the tentative finding of law that is the basis of your injunction that the statute is unconstitutional insofar as it requires the taking from the Estate?

THE COURT: It is unconstitutional for more than one reason, and that's one of them.

MR. CLARKE: So we do have a finding on the constitutionality?

THE COURT: Yes. All right, gentlemen——

MR. RUSH: Might I ask a question also, your Honor?

THE COURT: All right.

MR. RUSH: There's been so much argument about it that it becomes a matter of increasing concern as to whether in your Junr [*sic*] 2nd order you did in fact, as has been argued, intend to rule that the imposition of any labor protection on the Estate could not be done constitutionally, or

whether—I guess I simply understood it as you simply held it wasn't required under Section 17 of the Milwaukee Restructuring Act.

THE COURT: I held originally that it was not required under Section 17 of the Milwaukee Restrucing [*sic*] Act. I added, and you have to always bear in mind that it was in the context of the ruling on an application for preliminary [59] relief, that it was my view that it was highly probable that the final outcome of the case would be that any imposition of labor protection by Congress on the Rock Island payable out of the Estate was an unconstitutional taking.

MR. RUSH: Thank you, sir.

THE COURT: All right, gentlemen.

(Which were all of the proceedings had in the above-entitled matter on the day and date aforesaid.)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 75 B 2697

In the Matter of:

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY,
Debtor.

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled matter before the HONORABLE FRANK J. MC GARR, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Tuesday, October 7, 1980, at the hour of 2:00 o'clock P.M.

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[2] Broadley can start by addressing that.

THE CLERK: Motion of the United States to vacate preliminary injunction entered June 9th, 1980. Motion [3] of R.L.E.A. to vacate preliminary injunction and to direct Trustee to negotiate and declaration of I.C.C. not bound by June 9th, 1980 injunction in implementing Section 701 of the Staggers Act or lifting of prior injunction is taken under advisement.

THE COURT: Mr. Broadley.

MR. BROADLEY: May it please the Court, I am John Broadley from the Department of Justice appearing here for the Secretary of Transportation.

Your Honor, when we filed, or prepared our motion papers, we were anticipating that they recently enacted a rail deregulation bill which contains a Section 701 incorporating substantial amendments to the Rock Island Transition & Employee Assistance Act, would in fact be signed by the President today. Over the lunch hour I checked with the Domestic Policy Staff at the White House and

I was informed that the most likely date for actual signature would be Tuesday the 14th of October in the afternoon. I can't represent that the bill will in fact be signed. I think I can represent that I know of no substantial opposition within the Government to signature.

In order to save the Washington parties a second trip out here, we thought that it would be appropriate to at least hear the argument today, and for your Honor to take the matter under advisement pending [4] signature of the deregulation bill, or alternatively to assure an order, if you do decide to disolve [*sic*] the injunction, which would become effective upon signature.

THE COURT: I think that is appropriate. I will be willing to hear the arguments today, even though the bill hasn't been signed into law.

MR. BROADLEY: Your Honor, we have filed a motion and a very short memorandum, and attached the relevant portions of the Railroad Deregulation Bill which appear in the Congressional Record of September 29th.

MR. MANOS: Your Honor, may I respectfully interrupt, and I apologize to Mr. Broadley.

Do I understand that the Court is indicating that it wishes to hear all arguments, including the Government's argument as well as the Trustee ——

THE COURT: Well, I will hear the Government attorneys. They came out here in anticipation that we would be dealing with a bill that had been signed, and Mr. Broadley is correct that there is no use bringing them back Tuesday or Wednesday, whenever it is, so I will hear whatever they have to say on that subject.

MR. MANOS: Fine.

MR. BROADLEY: I have attached the relevant portions of the Congressional Record, and if your Honor does not

have a copy of the conference report which is in the [5] succeeding pages of the Congressional Record, we would be pleased to make one available.

The approach that Congress took in Section 701 of the Deregulation Act, is to take your Honor's decision of June 9th, 1980, in which you issued a preliminary injunction, and to address all the problems you found with the Act which bore on the finding of irreparable injury. It is really fairly simple in the way they made the changes. They have eliminated the anti-stay provision. As you recall, Section 106 D-1 of the Rock Island Transition & Employee Assistance Act, contained a provision prohibiting the Interstate Commerce Commission from staying its order, or any Court from staying either the order of the Interstated [*sic*] Commerce Commission or of this Court, which imposed and directed the implementation of a labor protection arrangement. That anti-stay provision has been removed in the proposed legislation. If you will notice the proposed legislation actually re-enacts Section 106, and 106-D, the new Section 106-D, does not contain anti-stay provision.

Secondarily, the Congress made clear that the Rock Island Transition & Employee Assistance Act did not, and does not affect the jurisdiction of the Court of Claims to entertain a suit under the Tucker Act in the event that any of the processes of the Rock Island—[6]I am going to refer to it as RIETA ——

THE COURT: All right.

MR. BROADLEY: —that any of the processes of RIETA effect the taking of the property of the Estate, and particularly they inserted two provisions. First of all, by inserting a new Section 124-C, into the RIETA, which makes it explicitly clear that the intention of RIETA was not to withdraw the Tucker Act jurisdiction. Secondly, they amended Section 110-E, which limited the liability of the

United States to make it clear that the limitation of liability was only a limitation of liability to employees. As you will recall, Section 110-E of the original Act, suggested that the Congress had intended to withdraw Tucker Act jurisdiction. That portion of 110-E which contained that suggestion was changed and an explicit provision put in which makes it clear that the Tucker Act jurisdiction is still available.

With these changes the basis for your preliminary injunction on June 9th, insofar as it relates to the question of irreparable injury, as we believe, will be eliminated. I might point out that there is one other jurisdictional change which was made. The jurisdiction of the Supreme Court to ultimately review any decision of the Seventh Circuit has been reinserted. As you will recall, the original Act withdrew Supreme [7] Court jurisdiction. The new Act changes that.

Since the basis for the finding of irreparable injury, which was necessary to support the June 9th preliminary injunction have been eliminated, we believe that the preliminary injunction should be vacated.

[8] Thank you very much.

THE COURT: Thank you, Mr. Broadley.

Mr. Rush, do you want to supplement that?

MR. RUSH: Thank you, Judge McGarr.

Henri Rush on behalf of the Interstate Commerce Commission.

The Commission takes a somewhat different view than the United States does of the matter, at least [9] at the outset. It is our position that because of the changes that have been made in the Act that it is essentially new legislation, and I have been asked by our general counsel to advise you of our position and belief, that upon enactment of that act the Commission is not bound in carrying out its

responsibilities under Section 701 of the Staggers Act, as the new legislation is called. We do not believe ourselves to be bound by your prior injunction, it being new legislation. That if you find the same infirmities exist that has prompted you to enter your other injunction, that a second injunction would be the appropriate manner in which to proceed.

We seek basically from you a declaration that would clear the air, indicating that you share our view that upon enactment 701 is different legislation, and the outstanding injunction no longer prohibits the parties from acting under the process set up in 701, which is, of course, 106 amended, with the changes that Mr. Broadley has pointed out which I will not reiterate. And also in connection with that we recognize that, of course, to make this process work we are going to have to have the cooperation of the Trustee. And, because upon signing, the time frame is very short. We believe it is appropriate to request that you specifically direct [10] him to so cooperate, and I am sure, upon your finding, that the process could and should go ahead, we would, but we do ask for that sort of direction also.

Alternatively we would join in the motion if you believe that your injunction will run through the new process as established, then we would ask that it be lifted so that that process may go ahead.

Our reading of the Regional Railway Reorganization Act cases in the Supreme Court is that the provision of the Tucker Act remedy cures, possibly, taking type constitutional infirmities, and we submit that that same result ought to obtain in this case and the process that Congress has sought to put into place for providing for Rock Island employees ought to be permitted to go ahead.

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[11] MR. CLARKE: With the Court's permission, my name is John Clarke and I represent the Railway Labor Executives Association.

Your Honor, we have also filed today a motion to vacate the preliminary injunction which was issued on June 9th. We have also asked for other relief in our motion, and that is that this Court direct the Trustee to negotiate with labor as will be required by Section 106-A of the amendments added by the Staggers Act, and also as now required to submit by 106-A of the Rock Island Transition & Employees Assistance Act. And if the injunction is vacated, those requirements come into force.

Your Honor, on Thursday of last week, we contacted the parties and informed them that we would be moving before the Court in a manner which we are doing today. On Friday we sent out a telegram to the Trustee, the Trustee's counsel, I should say, and then several of the creditors' counsel in this case. We would ask leave to submit to this Court a copy of that telegram indicating the notice which we gave to the parties that we would be appearing before the Court today.

THE COURT: You may.

MR. CLARKE: Your Honor, the reason why we are moving so speedily, especially now since the President has [12] considered, or is taking some time to enact to sign the legislation, is that once the Act is passed, it calls for a very strict timetable for both labor and management, and then on the I.C.C. The Trustee is directed by 106-A, where it says he may negotiate with labor for five days, or he may reach an agreement with labor. Actually that requires a negotiation with labor to reach an agreement, and we have five days to do it. Then if we don't agree within five days, the I.C.C. automatically has to assert jurisdiction over this matter and within ten day of that promulgate an arrangement. Therefore, it is extremely [*sic*] that we know right from the very beginning whether or nŏt the Trustee will take part in those negotiations, because we don't have any time to come back and forth to court and try to work it out since the five days will run

while that is ongoing. And if the past is any indication of what we can expect in the future, when the Rock Island Transition Act was initially enacted, back in May, on May 30, the Trustee at first asked for a postponement of the hearing at a meeting scheduled before the National Mediation Board, and it was postponed at his request until the next week. Then the Trustee declined to attend after postponinig [*sic*] it once more because of his view that the Act was unconstitutional and he could not take part. Now, of course, unfortunately what has happened since [13] that time, it was on June 2nd that this Court ordered the abandonment of the entire System and ruled that there would be no labor protection, no protection for employees as a result of that abandonment. The Rock Island Transition Act applies a protection, a compromise-type of protection for employees. And if the Trustee's position on the various sales that have been before this Court is any indication of what we can expect in the Rock Island Act, the Trustee will take the position that the order of the Court authorizing abandonment, declining to impose protection, automatically ends any obligation the Trustee might have to negotiate with labor for a protective arrangement. Therefore, we submit that this matter is now ripe before this Court to make a decision, and we would ask that when the Court considers the various pleadings and determines whether or not to vacate its injunction, that it also, at that time, consider whether or not it should direct the Trustee to negotiate. We would submit that the Railway Labor Act, which is still applicable to the Trustee, since he is still a carrier, even under this Court's order authorizing the abandonment, he is a carrier until the 180-day period ends, at least that long, but we submit longer, but as far as this Court need be concerned, since the Court has delayed part of the abandonment from 180 days from its order, the Trustee [14] is still carrying under the Railway Labor Act, under the Interstate Commerce Act, and therefore under the Railway Labor Act as well. He has an obligation

under Section 2, first to attempt to resolve any disputes between parties, between himself and labor, and also to reach and make agreements. One of the mandatory items which he now has to bargain about, according to Congress, is protection for employees, and therefore, we would submit that it is proper for this Court to direct the Trustee to engage in those negotiations.

Now just briefly, as to the relief that R.L.E.A. is seeking on the motion to vacate. We would submit, your Honor, that the signing, once the Staggers Act is actually signed, the injunction which this Court issued back in June would become moot at that point. The appeal which R.L.E.A. has taken would become moot at that point. Until then, however, there is still a basis for this Court to vacate that injunction. The only reason, substantive reason that can be given, and has been given, by the Supreme Court, for example, Mr. Justice Stevens' decision, and by your Honor, the only articulated reason was that the Act effected an unconstitutional taking of property.

The Act now provides, or we initially argued, that that unconstitutional deprivation of property was [15] not irreparable harm, if it was unconstitutional in this case, because the Tucker Act was avaialable [*sic*] as a remedy. This Court, during the oral argument, at the conclusion of it stated, that it is questionable whether or not the Tucker Act is available, and if it is not available, then it is clear that the Estate would be harmed, that the creditors would be harmed. Since if there is an unconstitutional taking they would have no remedy to recover their funds.

Congress' passage, near passage of the Staggers Rail Act of 1980, where it expressly states in its conference report that it has made explicit in the statute what it always intended, namely that the Tucker Act would be available. That it would not take the Tucker Act remedy away. It eliminates the argument that can be made whether or not the President signs the bill that the Tucker Act

remedy is not available to the creditors or to the Estate in this case. So therefore, we submit, that the irreparable harm that could have resulted from an unconstitutional taking of property does not exist, and there is a speedy appellate procedure built into this Act, and before there can be any real money being given out to employees as a result of the arrangement that might be promulgated in this matter, or agreed to, the constitutionality of this can be [16] decided by the Court of Appeals. As the record in this case show, or the record in the previous injunction shows, a similar type of legislation took 56 days to fund on the Milwaukee, where we had a willing trustee, and a willing processing of the matter. Here we do not have that. We have a long road ahead of us. So it is, we submit, very unlikely that there will be any funds actually paid out prior to the decision on the constitutionality. But, in the meantime, we have lost approximately four months while we have been hasseling about the constitutionality of the Act. Those four months, or four more months where employees are running out of unemployment compensation, if they were entitled to it, which totals $25 a day or a total of $125 a week. In today's times it is hardly enough for anyone to make ends meet for any amount of time.

We are at the point where there is a drastic need for the funds for the employees. We submit that we have to go forward as readily and speedily as possible. To do that we would submit, in the best interest of all, that this Court vacate the injunction immediately upon the signing of the Act, if not prior to that time. Thank you.

THE COURT: Thank you, Mr. Clarke. Mr. Manos, do you want to respond?

[17] MR. MANOS: Your Honor, I am going to respond very briefly, because by the very nature of the presentations by the three gentlemen, Mr. Broadley, Mr. Rush and Mr. Clarke, it would appear that there are many matters that the Court must carefully consider before granting the respec-

tive relief to which each of the said gentlemen addressed themselves to. And each one has really approached this a little differently. There are many things that each of them ask, but central, however, to everything that they are stating is that now the Staggers Act gives us, or gives the Court or gives the parties relief by injection of two lines in the new Act which state that the Tucker Act relief is available.

I believe that Mr. Broadley's statement is quite accurate when he says that what has occurred here is that there has been a pronouncement of the jurisdictional, a statement of the jurisdictional confirmation of what the Tucker Act does, and it is purely that and nothing more. And this, of course, is something that the Trustee wishes to address very carefully when we are able to respond to this in writing and to present the oral argument of the Trustee, and I am sure the other parties wish to address the same issues.

So, your Honor, in response, or my immediate reaction to what I have heard today, is that [18] we need the opportunity, first of all, to react in writing so that the Court can make a recent decision, and also the immediate reaction that the unconstitutional taking still exits [*sic*]. And the Tucker Act jurisdictional statements, that is now contained in the Staggers Act does not cure that taking. So that the basis that previously existed or existed when your Honor entered its preliminary injunction, is still exists. The irreparable harm is still there. I will be in a position for the Trustee to respond to the oral statements and to the simple pleadings that have been filed here today by the three gentlemen so as to justify the need for the continuation of the preliminary injunction, the refusal or the denial of the relief that is asked by the gentlemen, or as Mr. Rush put it, alternatively, and also the additional reaction to this entire matter, serious as it may be. That while we are in sympathy, yes, that there is a need for perhaps some employee relief. This relief must not come from this particular estate. Let the Government come up with a grant if it desires to do so, but the imposition of a claim against this estate, in the

manner now that Congress has, within a few days of the election decreed, seems staggering beyond all comprehension.

THE COURT: That is why it is called the "Staggers Bill." [19] MR. MANOS: This is the "Staggers Bill," excuse me, I didn't mean it in that fashion, but it is staggering.

Anyway, the type of legislation that calls upon all of the parties now within 60 days, it calls upon the Seventh Circuit to make decisions within 60 days, to do so on a reason [*sic*] basis, and for the reason that they say there is a great public benefit, a great private benefit to the Estate. These are the matters, your Honor—I don't wish to make the argument now—these are the matters that we will address on the next date, your Honor.

Now with respect to the next date, your Honor, I feel that the indication of the Court was that he wanted to hear Mr. Broadley, Mr. Rush and Mr. Clarke, so that they might be able to get back, but we would like some considerable time here—did I understand Mr. Broadley to say, or Mr. Clarke to say that the signing is not expected until the 14th, am I correct?

THE COURT: That is their best information. I don't think any of us can take that as absolutely guarantied [*sic*], but that is apparently the best information.

MR. MANOS: If that is the case we are looking then to next Tuesday for President Carter, if he is going to do it. Of course, that is another element that is kind of surprising in today's proceeding, that we are talking about a law that isn't even a law. If he does sign this [20] on Tuesday, I feel, your Honor, that this Court should not, not even address a prospective law, should be looking at a law when it is a law, and if that is not going to be until Tuesday, perhaps Tuesday or thereafter, as the Court sees fit should be the date that the matter should be argued and addressed for an expeditious decision by the Court. In the interim,

if we can file—we have to file here in response to what has been stated here today, the Court and all the parties will have at least an opportunity, though slight, only a few days, of presenting to the Court for its reason [*sic*] decision some of the arguments that the Trustee wishes to advance, and I'm sure all of the other parties here as well. Thank you, your Honor.

THE COURT: Do any of the creditors wish to address this subject?

MR. MURRAY: Your Honor, Dan Murray for the Intervenors Crown, et al.

If your Honor please, we are not in a position today to give a full exposition of our views on the Harley O. Staggers Act of 1980, insofar as it relates to the Rock Island, and the reason we are not, your Honor, is that the Act was only recently made available to us, and indeed, it has not even been signed into law and approved by the President. Therefore it would be premature, in our view, for the Court to take [21] any action with respect to this legislation today. The issue only is presented to your Honor, if and when the President should sign the Act into law, and, indeed, we find it extraordinary that the matters have been addressed both to this court and indirectly to the Seventh [Circuit] Court of Appeals this morning. In our view the matter is not ripe for this Court's consideration until the bill is signed into law.

THE COURT: Let me say, Mr. Murray, that the reason for that, and I, perhaps, am more tolerant of it than you, is that the earlier indication was that it was to be signed into law Friday or Monday, and that is why.

MR. MURRAY: I understand that, your Honor.

In any event, your Honor, what we would like to do is to have leave to file a more extended statement of position. A brief on this subject. This afternoon I would only

like to cover a few very basic points and leave the more detailed argumentation to our brief, or whatever oral argument follows thereafter.

I think several significant admissions have been made by the United States and by the Interstate Commerce Commission and the Railway Labor Executives [*sic*] Association today. In the first place, we have been told by the attorney for the Railway Labor Executives [*sic*] Association, as we were told several months ago on the [22] original argument on this matter, that there is really no assurance that the monies will not be paid out. The $75 million will not be paid out. He alluded to the fact that it took a certain number of days, 57 days, for the Trustee in the Milwaukee Road case to eventually pay out monies. But the fact of the matter is that the minute the Act takes effect there is created on this Estate a lien that will eventually be realized within a very short period of days, and this Estate can ill afford to have any prior lien of this nature placed upon it, and your Honor has so ruled. The Estate of the Rock Island has already been burneded with expenses of administration well in excess of the thirty million that were incurred just prior to the order to liquidate that your Honor entered in January of this year. The Rock Island has many other expenses, prior expenses that burden this Estate. The Trustee is attempting to conduct a liquidation proceeding in a most precarious set of circumstances. The fact of the matter is that the Rock Island Estate, as your Honor knows, has had numerous petitions brought into court against it, to realize on the payment of expenses of administration claims. The immediate relevance of that is that the Rock Island, even to this day, is carrying out business in terms of the liquidation that requires suppliers to supply it with materials. That requires [23] people to afford it, carry on business relationships with the Rock Island. These people have to rely upon the fact that the Rock Island can conduct its affairs in an orderly manner. The fact of the matter is that the $75

million prior lien placed on this Estate, when the funds that are available, the liquid cash that is available is so meager, there is real doubt in my mind that the Rock Island is going to be able to carry on. I do think there is very severe irreparable injury. Even if that were not the case, the fact of the matter is that there is a violation of the constitutional rights that will occur when a lien is placed on the Estate. It is not something that is going to happen in the future. It is going to occur when the Act takes effect and this process gets under way. So there will be a disruption of the liquidation process. There will be an impermissible lien that will be placed on this Estate. For those reasons alone, your Honor, we believe that this Estate has suffered irreparable injury and that this injury cannot be permitted to occur if this Act is permitted to be implemented.

There are other matters in this Act that gravely concern us, especially matters concerning the procedure, the summary procedure that this Act sets up that is of great concern to us. The unprecedented very strict and compressed time periods that are provided [24] for judicial review. The mandating of consolidation of the case with the Milwaukee Road case in the Seventh Circuit Court of Appeals. The mandating that the case be heard in the Seventh Circuit of Appeals en banc, as with the earlier Rock Island Transition & Employees Assistance Act. This particular Act contains extraordinary procedural provisions that violate the separation of powers clause. It violates the due process and equal protection clause. It violates the uniform laws on the bankruptcy clause of the United States Constitution. In that respect I should point out, your Honor, the unequal treatment that occurs as between the Milwaukee Road, the Rock Island Railroad and Conrail. The Milwaukee Road has very substantial indebtedness forgiven it by this Act. It could be well in excess of $50 million that could be forgiven if certain events occur. Conrail is provided in this same Act very substantial funds for labor protection

as a gift, as a grant. The Rock Island is treated completely differently in this Act, and we believe that that violates various provisions, including the uniform laws on bankruptcy provisions of the United States Constitution.

Your Honor, today, we are not prepared to go into all the details in which the way this Act is of concern to us. I have pointed out the irreparable [25] injury provision. I would also be concerned that the matter of the Tucker Act, in our view, is only a cosmetic matter. The Act only provides that the Tucker Act remedy is not precluded. It doesn't grant that remedy, and, indeed, there is no recognition on the part of the United States that there is liability. It is dramatically different than the Penn Central case, which arose in the 3-R Act cases, and we will point that out at length in our brief. But the fact of the matter is that here we have a prospective violation of constitutional rights, and it is inconceivable to us that the Congress can permit a violation of the Constitution and cure that violation by providing that at a later date some sort of recovery might be had, or is not precluded because a lawsuit may be filed under the Tucker Act. We do not believe that that is the kind of protection to which individuals are entitled under the Constitution. It seems to us the judiciary has an obligation to provide much more substantial protection of individual's constitutional rights.

Your Honor, these are all the matters I would be prepared to discuss today, but, as I say, I would like the opportunity because of the very grave questions that are presented in this legislation to have the time in which to brief this matter. I would point out to your Honor that in the appeal that was filed by the [26] Railway Labor Executives [*sic*] Association, and the papers that were filed with the Supreme Court, the intimation was that we did not have sufficient time in the earlier proceedings to consider these matters. I don't agree with that but I think we ought to have the time to carefully consider these matters, to brief this

question, and in the interim nothing should proceed. The Estate should not be prejudiced in any way until your Honor has had the time in which to carefully consider all of the very grave questions that are raised by this extraordinary and unfortunate piece of legislation. Thank you, Your Honor.

THE COURT: Mr. Murray has covered the grounds for the creditors, if you want to supplement it briefly, you may—Mr. Moritz, do you have something——

MR. MORITZ: Your Honor, I like Mr. Murray, find that I am not prepared to lay out all of the deficiencies in the Act. I would adopt Mr. Murray's comments. I would like to reemphasize one very critical aspect of this new legislation as contrasted with the legislation that was challenged before this Court in June of this year, and that the Court found to be constitutionally deficient.

What this Court determined there, and I am referring to the transcript of proceedings at Page 77 and 78, was that there was an unconstitutional taking [27] by reason of the imposition of labor protection obligations. The existence or the absence of the Tucker Act was tangential to that central determination. We have a finding that labor protection violates the rights of this Estate, and that the violation, if permitted to go forward, would constitute a clear violation of Fifth Amendment rights that the Estate and the creditors enjoy. When the R.L.E.A. moved to the United States Supreme Court for a stay of this Court's injunction, that very same issue was focused on by Mr. Justice Stevens. In R.L.E.A. vs. Gibbons, and I don't have the cite, but it was decided June 28th, 1980. Mr. Justice Stevens said:

> "Having read the parties' submissions, I am of the opinion that Judge McGarr was probably correct in concluding that the Act authorizes an unconstitutional taking of the property of the Estate. It appears to direct a transfer of $75 million off the top of the Es-

tate assets to the employees. While such a transfer might be permissible in the course of a genuine reorganization, at least at this moment I have difficulty perceiving how, in the context of a liquidation, this is anything other than a simple taking of the property of the general creditors, as the Trustee argues."

The new Rock Island provisions in the Act [28] that is before the Court today makes no change in that fundamental determination by this Court as acknowledged by Mr. Justice Stevens. There is still a taking. It is still $75 million off the top of the assets of the Estate. All that Congress has done is add the language in the statute that a Tucker Act remedy may be available. Now the Tucker Act isn't a provision to permit Congress to violate a constitutional right of citizens, and then permit litigation to follow thereafter to attempt to redress those rights. That is now what the Tucker Act is intended to do. Indeed, the Tucker Act would be an abominable piece of legislation if it permitted constitutional rights to be violated willy-nilly by the Congress, with rights of relief sometime thereafter in the courts. We think we can establish that point firmly and we would like the opportunity to brief that and the other points, the other deficiencies in this Act.

I would join in Mr. Murray's comment that I think that a reason [*sic*] consideration by this Court is appropriate. We are not interested in creating problems for the people Mr. Clarke represents, but we feel that Congress is attempting to do here something which the Constitution was designed to prevent.

THE COURT: I think I should make some comments on this.

[29] As has been pointed out, it is in effect, a discussion of problems created by a law that is not yet a law but which will very probably become one soon. For that reason, I think the discussion is appropriate.

What I have before me, to be more precise about it, is motions by three parties to vacate a preliminary injunction, which I entered on June 9th, 1980. I have listened to the arguments on this. I have formed some tentative opinions. I don't really intend to rule on those motions because everybody is entitled to a little more chance to develop the matter with themselves and with me, and, of course, we should wait until it becomes a reality. I think these observations of mine are pertinent only because of the suggestion of Mr. Rush that I might find his position so appealing that I would agree now that the Commerce Commission is correct in regarding my former injunctive order as not binding upon them because this is in effect new and different legislation. I want to make my position clear so that there is no misunderstanding between myself and Mr. Rush and/or the Commission.

Actually, as has been adverted to, the basic vice of the Act which I held unconstitutional was the imposition of the cost of the Rock Island Rehabilitation Act on the Estate and thus on the creditors. I issued [30] a preliminary injunction basically because I found the Act unconstitutional and thought it was my duty to enjoin the carrying out of the programs set forth by Congress seeking the unconstitutional goals that I found.

We had discussions of whether a preliminary injunction was issuable, and we discussed the traditional irreparable injury concept that goes with that determination. I did issue the preliminary injunction accompanied by a finding, among other things, that there was irreparable injury. The bill, as I now see it, amends and attempts to cure some of the procedural problems with the Act which was before me in an effort to remove the irreparable injury argument concerning the old Act. The new bill does not address the basic finding of the Court that the whole program which has been changed only cosmetically, to borrow somebody else's word, was an unconstitutional deprivation. I held that and an appeal is in progress. The argument that the Tucker Act is available and therefore we could go ahead with the

unconstitutional taking because the Tucker Act will allow everything to turn out in the end really does not impress me. I share Mr. Moritz' comment, or argument, that you do not proceed, nor must the Court allow proceedings under what is patently unconstitutional legislation because there is a remedy somewhere down the line that may straighten things out. [31] It really is not at all clear to me that to disperse the money now, to allow the claim against the assets of the Rock Island to accrue, to say to the Trustee that if this is all unconstitutional you can sue under the Tucker Act and get it back, is even to cure the irreparable harm argument. Mr. Murray argued that the very fact of the existence of the $75 million lien on the assets of the Rock Island is irreparable injury as it overshadows the efforts of the Trustee to continue the liquidation process relying, as he must, on the ability and willingness of people to extend credit under cost of administration terms.

So, as I said, my initial impression without ruling on it is that the new bill does not cure the old problem.

Mr. Rush asks me to agree that it is new legislation so that the old injunction, which he has moved to vacate is no longer binding on the Commission, and I would like to make it clear that I do not agree. This is not new legislation in my view. This is amended legislation which attempts, but fails, to clear the underlying flaws which caused me to find the bill unconstitutional in the first place. It remains basically the same law with the same defects and is subject to the same injunction. So, while I am not ruling on the motion [32] to vacate the injunction because I would like the parties to have an opportunity to develop the matters as fully as they wish before me, I am making these comments to make it clear that I do not agree with the Commerce Commission's suggestions that the injunction is no longer binding on them.

I think what we had better do, gentlemen, is to allow the various people opposing the motion to file some very quick

responses, and then give Justice, the Commerce Commission and Mr. Clarke an opportunity to reply so that they will have a change to air their views on it.

• • •

[35] MR. CLARKE: Your Honor, on behalf of Railway Labor, it is critical that we have an order by Tuesday, because if your Honor rules the way it appears, in light of your tentative conclusions on this matter, we will have to immediately go for a stay of the injunction again, and that means immediately right up to the Court of Appeals because we have to get negotiations ongoing in the five-day period, or else the I.C.C. will take over, and if we take five days ironing out the legal positions of the parties, and whether there is an injunction or not, we lose those five days, and there is no provision in the Act for a holding——

THE COURT: Assuming a ruling that I continue to believe it is unconstitutional, obviously you are not going to get the Trustee to negotiating within the five-day period.

MR. CLARKE: Unless the Court of Appeals tells him to.

THE COURT: All right, unless the Court of Appeals tells him to——

MR. CLARKE: Yes, sir.

THE COURT: On the other hand, assuming that you get a ruling on Tuesday and you have got five days, which takes [36] you through the following Saturday or Sunday, it would be miraculous to get a Court of Appeals to do anything in that short a span.

MR. MANOS: There is another presumption, your Honor, that the negotiations could be fruitful.

THE COURT: I could never understand why Congress imposes this Draconian time limit of five days on the matter. I have never seen them request to do anything under ten or fifteen or twenty before, but that is beside the point, it is there and we have to deal with it.

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Order of the United States District Court
October 15, 1980

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 75 B 2697

In the Matter of

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY,
Debtor,

WILLIAM M. GIBBONS, as Trustee of the Chicago, Rock Island and Pacific Railroad Company, Debtor; CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Indenture Trustee; THE FIRST NATIONAL BANK OF CHICAGO, as Indenture Trustee; and HENRY CROWN, ET AL.,
Plaintiffs,

v.

THE UNITED STATES OF AMERICA; THE INTERSTATE COMMERCE COMMISSION; and NEIL GOLDSCHMIDT, United States Secretary of Transportation, *Defendants.*

PRELIMINARY INJUNCTION

This matter is before the court on the motion of intervenor Railway Labor Executives Association ("RLEA"), requesting this court [to] vacate the preliminary injunction issued on June 9, 1980, enjoining enforcement of sections 106 and 110 of the Rock Island Transition and Employee Assistance Act ("Rock Island Act" or the "Act"), 45 U.S.C. §§ 1005, 1008, on the grounds that all constitutional defects have been remedied by passage of the Railroad Transportation Policy Act of 1980 ("Staggers Rail Act of 1980"), H.R. Rep. 1430, 126 Cong. Rec.-House 9892 (Sept. 29, 1980). The trustee and certain creditors also seek a declaratory judgment and injunctive relief declaring the Rock

Island Act as amended by the Staggers Rail Act, unconstitutional and enjoining its enforcement. In anticipation that the Staggers Rail Act would be signed into law, the court heard arguments on October 7, 1980, from all interested parties, addressed to the effect of the Staggers Rail Act on the court's preliminary injunction.

This court issued a preliminary injunction on June 9, 1980, when, based upon findings of fact and conclusions of law delivered from the bench, the court concluded that "the probability of determination of unconstitutionality of this Act after more mature consideration and deliberation is exceedingly great. . . ." Transcript of Proceedings, June 9, 1980 at 81. Specifically, the injunction prevented the Interstate Commerce Commission and the Secretary of Transportation from imposing a $75,000,000 loan with cost of administration status on the bankrupt estate. These proceeds were to fund a labor protection arrangement created under the Act. This determination was based upon the court's finding that the provisions of the Act mandated a taking of private property of the estate without compensation, in violation of the fifth amendment.

On June 28, 1980, United States Justice John Paul Stevens denied RLEA's motion for a stay of this court's injunction.

The Staggers Rail Act became law on October 14, 1980. It amends certain provisions of the Rock Island Act and re-enacts the labor protection obligations previously found unconstitutional by this court. The re-enacted labor protection requirements appear to be essentially the same as under the original Act except that the time available for the trustee and the Commission to respond is shortened and the anti-stay provisions of section 106 have been eliminated.

This court has studied the Staggers Rail Act amendments to the Rock Island Act, has reviewed carefully the

arguments of counsel, the documents filed by the various parties, the ruling of June 9, 1980, and the court's knowledge of these proceedings, and it remains clear that the Rock Island estate continues to be exposed to irreparable injury by the provisions of the Rock Island Act as amended by the Staggers Rail Act. The Staggers Rail Act does not cure the defects found in the Rock Island Act. Like its predecessor, the Staggers Rail Act imposes a $75,000,000 cost of administration claim on the Rock Island estate with priority over claims of general creditors and shareholders on the assets of the estate.

Petitioner argues that the statutory scheme can be implemented, the money disbursed, and the validity of the program and extent of the Rock Island liability to finance it, later litigated. This, in fact, cannot be done without irreparable injury to the administration of the estate for the benefit of the creditors. The trustee is currently liquidating assets and preparing the plan for distribution to creditors. Under court order, the trustee is also preparing an interim plan for the immediate partial satisfaction of cost of administration claims. The imposition of a $75,000,000 uncertainty on the estate will totally halt the liquidation for the long period consumed by the appellate process, with irreparable injury to the already long-suffering creditors. Further, the whole liquidation plan will be distorted by the brooding omnipresence of a potential liability representing a significant percentage of the total assets.

Pursuant to the requests for relief in the written filings and arguments of counsel, the court orders the issuance of a preliminary injunction.

1) The Rock Island Act as amended and re-enacted by the Staggers Rail Act effects an unconstitutional taking of private property in violation of the rights of the Rock Island estate, its creditors and shareholders which are secured by the Fifth Amendment of the United States Constitution.

2) The implementation of this Act will constitute irreparable harm to the estate.

3) The court's injunction of June 9, 1980 remains in full force and applies to sections 106 and 110 of the Rock Island Act, as amended and re-enacted by the Staggers Rail Act.

4) The court orders the issuance of a preliminary injunction:

a) preliminarily enjoining the Interstate Commerce Commission from asserting jurisdiction to consider or to impose any labor protection arrangement or obligation under the Rock Island Act as amended and re-enacted by the Staggers Rail Act; and

b) preliminarily enjoining the trustee, William M. Gibbons, from entering into negotiations respecting any labor protection agreement and from implementing any labor protection agreement under the Rock Island Act as amended and re-enacted by the Staggers Rail Act; and

c) preliminarily enjoining the United States Secretary of Transportation from requesting, approving or guaranteeing any loan or obligation on the estate of the Chicago, Rock Island and Pacific Railroad Company under the provisions of the Rock Island Act as amended and re-enacted by the Staggers Rail Act.

ENTER:

/s/ FRANK J. McGARR
United States District Judge

DATED: October 15, 1980

Order of the United States District Court
October 16, 1980

The Preliminary Injunction entered October 15, 1980 is hereby corrected as follows:

1) p.1, lines 1 and 2 [p.205a, lines 1 and 2 and first three words of line 3] should read: "This matter is before the court on the motion of intervenor Railway Labor Executives Association ('RLEA'), joined by the United States and the Interstate Commerce Commission, requesting this court. . . ."

2) p.3, line 13 [p.207a, lines 9 and 10] should read: ". . . Island estate with priority over claims of creditors and. . . ."

3) p.4, line 4 [p.207a, line 29] should read: ". . . arguments of counsel, the court orders the continuance of the preliminary.

4) p.4, line 16 [p.208a, lines 7 and 8] should read: "4) The court orders the continuance of the preliminary injunction: . . ."

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

(Argued *en banc* November 13, 1980)

December 16, 1980

Before HON. THOMAS E. FAIRCHILD, *Chief Judge*
HON. LUTHER M. SWYGERT, *Circuit Judge*
HON. ROBERT A. SPRECHER, *Circuit Judge*
HON. WILLIAM J. BAUER, *Circuit Judge*
HON. HARLINGTON WOOD, JR., *Circuit Judge*
HON. RICHARD D. CUDAHY, *Circuit Judge**

In the Matter of:

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY,
Debtor,

Nos. 80-2487 and 80-2536
Appeals of:

RAILWAY LABOR EXECUTIVES' ASSOCIATION; THE UNITED STATES OF AMERICA; THE INTERSTATE COMMERCE COMMISSION; and NEIL GOLDSCHMIDT, United States Secretary of Transportation, *Defendants-Appellants.*

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division

No. 75 B 2697

FRANK J. MCGARR, *Judge.*

ORDER

This is an appeal from an order entered by the district court October 15, 1980, continuing in effect a preliminary

* Circuit Judges Walter J. Cummings and Wilbur F. Pell, Jr. did not participate in the *en banc* hearing.

injunction issued June 9, 1980; the injunction bars the Interstate Commerce Commission, the United States Secretary of Transportation, and the Trustee of the Debtor from complying with the labor protection requirements of Rock Island Transition and Employee Assistance Act, as amended by the Staggers Rail Act.

We heard the matter *en banc* pursuant to the Staggers Rail Act. Those circuit judges in regular active service who deem themselves disqualified did not participate. We took with the case a motion to dismiss on the ground that the issue is pending before the Supreme Court, an appeal having been taken from the injunction of June 9, 1980 before enactment of the Staggers Rail Act.

We all agree that in view of the Staggers Rail Act the motion to dismiss the appeal should be DENIED, and IT IS SO ORDERED.

On the merits, Judges Fairchild, Sprecher, and Cudahy voted to reverse the order appealed from. Judges Swygert, Bauer, and Wood voted to affirm.

The Court being equally divided, the order appealed from is necessarily AFFIRMED.

IT IS SO ORDERED.

Related Transcripts, Orders and Reports

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 75 B 2697

In the Matter of:

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY,
Debtor.

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled matter before the HONORABLE FRANK J. MC GARR, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois on Friday, the 21st day of September, 1979, at the hour of 4:00 o'clock p.m.

* * *

[7] MR. MANOS: Your Honor, the fact of the matter is that President Carter yesterday exercised his presidential powers and created, or announced the creation of an emergency board. Now I won't go into details relative to the Executive Order. It is a short one. It is dated September 20th, 1979 from the White House. Most of the details relative to the Executive Order are contained in the media, but nevertheless, for the record, let me state—let me read it into the record, if I may, your Honor, it is a very short one.

THE COURT: All right.

MR. MANOS: This is an Executive Order, this is dated from the White House, September 20th, 1979 creating an emergency board to investigate disputes between the Chicago, Rock Island, Pacific Railroad and Peoria Terminal Company and the Brotherhood of Railway, Airline & Steamship Clerks, Freight Handlers, Express and Station Employees and the United Transportation Union.

"Disputes exist between the Chicago, Rock Island & Pacific Railroad and Peoria Terminal Company and certain of its employees represented by both the Brotherhood of Railway, Airline & Steamship Clerks, Freight Handlers, [8] Express and Station Employees and the United Transportation Union. These disputes have not heretofore been adjusted under the provisions of the Railway Labor Act as amended, and these disputes in the judgment of the National Mediation Board threatens substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service. Now, therefore, by authority vested in me by Section 10 of the Railway Labor Act as amended, 45 United States Code 160, it is hereby ordered as follows: Section 1-101. Establishment of Board: There is established a Board of three members to be appointed by the President to investigate these disputes. No member of the Board shall be peculiarly or otherwise interested in any organization of railroad employees or any carrier. Section 1-102, report: The Board shall report its findings to the President with respect to these disputes within thirty days from the date of this order. Section 1-103. Maintaining conditions: As provided by Section 10 of the Railway Labor Act as amended, from this date and for thirty days after the Board has made its report to the President. No change, except by agreement, shall be made by the Chicago, Rock Island, Pacific Railroad and Peoria Terminal Company, or by its employees, in the conditions out of which these [9] disputes arose."

Your Honor, while we have not been formally served by anybody with the Executive Order we have a copy of it and we acknowledge that the Order was entered by the President. We need no formal announcement of the fact.

Your Honor, this morning Mr. Gibbons sent telegrams to Mr. Fred Kroll, and also to Mr. Chester, the gentleman representing the Brotherhood of Railway, Airline & Steamship Clerks and the United Transportation Union, respectively. The telegram in content is the same as to each gentleman, and I would like to read that into the record.

> "Concerning President Carter's appointment of an emergency board to review our dispute to accomplish orderly return of employees to work, in accord with our returning business, we require your prompt cooperation. Please advise when UTU"——

and the other telegram, your Honor, obviously it said "BRAC."

> "—Please advise when UTU will comply with President Carter's Executive Order."

Now, your Honor, this was signed by the Executive Vice-President of the Railroad. We have not received a response to the telegram from the Brotherhood of Clerks. We have received, as of September 21st at 2:16 p.m. a telegram from Mr. L.H. Chester, the President of the United Transportation Union addressed to the Executive Vice-President, Mr. Mitros [10] of the Rock Island Railroad.

> "In re: Your telegram September 21, 1979. Alleged appointment of emergency board, Rock Island Railroad. Upon receipt of official notification of President Carter's Executive Order and appointment of an emergency board we will advise you the UTU return to work arrangements."

This is signed L.H. Chester, President.

Your Honor, to this moment we have not received, but hopefully and expectantly are awaiting a response from BRAC. We are quite anxious, your Honor, and the Trustee

is quite anxious to meet with the two Unions and to arrange a back to work, in line with the Executive Order of President Carter.

THE COURT: It is not unreasonable to assume, since you didn't receive an official service of the order, and UTU said they haven't received it, that maybe nobody as yet received it.

MR. MANOS: Your Honor, I do believe it has been entered. I saw President Carter announcing the Board——

THE COURT: I am sure it's been entered, the President has announced it, the Fedral [*sic*] Railway Administrator called me and said that it had been entered. I suppose if the Unions are taking a position that until it is served upon them they are not going to recognize it we have to deal [11] with that position. Go ahead.

MR. MANOS: Now, your Honor, with respect to today's status report hearing. Your Honor knows that late in the month of August, I believe August 27th or 28th, the strike occurred. The strike was brought first by BRAC and then by UTU. I won't go into the details that led to the strike by the two Unions, and which included then a walk-out by all of the other unions.

Since that date the Rock Island, in the exercise of its common carrier obligation, has been operating to the best of its ability, which leads us to today's status report with respect to cash and the cash requirement attendant—the on-going strike operation of the Trustee.

Now, your Honor, I have noted as I walked into this courtroom the presence of many parties in interest. They are parties in interest. I have noticed the representatives and the attorneys of BRAC present in the courtroom. They have a right to be here, and certainly they have an urgent interest in the proceedings.

I have noticed that there are representatives of UTU. They equally have a right to be here. . . .

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[21] [THE COURT:] Mr. Manos raises today the problem which I isolate as the issue of being unwilling to discuss the cash position of the Railroad in the atmosphere of the strike. Now that makes a lot of sense if you are in the middle of a strike. The problem we have with it now is that presumably by Presidential Order the strike is over and everybody is supposed to go back to work. It is unfortunate that the Unions are playing "dog in the manger" and pretending they don't know about this and that they are not going to adknolwedge [*sic*] it until they are served and so forth. Sooner or later I suppose somebody is going to catch them and they are going to have to read the order and they are going to have to comply with it, and I can make no assumption other than that they will comply with it. However unhappy they may be with it I am sure the Unions like everybody else are going to obey a Presidental Order and I would hope and expect that they would sit down immediately and that they would discuss with the Rock Island the mechanics for getting them back to work and getting the Railroad running again. Any other result would surprise me. The only open question is when the Unions [22] are going to face up to this problem and get down to negotiating and discussing it.

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[33] [MR. BROADLEY:] As your Honor pointed out, we are hoping that the Unions comply that the Rock Island complies with the President's back to work order under the Railway Labor Act. I presume if they don't comply my colleagues will attempt to seek appropriate injunctions to require them to comply. The Trustee himself, in a document which I believe he filed with the Court yesterday, said—the end of the last page—my estimates of start-up

costs for such resumption is 30 million. All of these monies to be allocated to repair damage caused by the strike and for immediate working capital to resume essential services.

Getting a railroad back into operation after a strike of this long raises many, many questions of extraordinary expense. Grinding rails, inspecting—that type of thing which I won't go into because I don't pretend to be an expert on them.

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[58] THE COURT: We are past that. I was sympathetic to that when you started because I understand your position vis-a-vis the unions. But everything I hear about the Rock Island and the immanence of the crisis of necessary cessation because of the lack of cash suggests to me that the problem of the strike and whether the Union is going to obey the Presidential Order tonight or tomorrow or the next day are minuscule compared to the problem of whether you can keep going [59] in view of the piling up of obligations to October 10th. That is the thing that Mr. Broadley picked off a whole series of obligations, and also asked for an explanation of how you are going to handle the 30 million start-up cost which is your figure. Maybe you want to respond to that.

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[60] THE COURT: I haven't heard anyone willing to give you the 30 million. In our conference in chambers the FRA said no.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 75 B 2697

In the Matter of:

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY,
Debtor.

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled matter before the HONORABLE FRANK J. MCGARR, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Wednesday the 23rd day of January, 1980, at the hour of 2:00 o'clock p.m.

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[3] [MR. MORITZ:] . . . One of the principal purposes of being here today was to present the Court with the Peat, Marwich [*sic*] & Mitchell study. Hr. Hill, and the staff of PM&M, met with the creditors and with the Trustee and their staff the better part of this morning and the early afternoon and they are present in court now.

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[10] THE COURT: I think you have completed your statement. I now know that all is not sweetness and light in the matter of the PMM study and that there is going to be some concern as to whether portions of it should be re-cast or re-done afterwards. Knowing that maybe I think it is appropriate that I hear from Mr. Hill at this time as to what he has done and what he has presented.

Mr. Hill, would you come up and give me the background of the presentation of the report, bearing in mind that you were and are in effect a witness of the Court and that it was at the Court's request that you did this study and

that somewhere shortly after you started it we changed its direction somewhat. I would just like your statement concerning this large fat document that Mr. Manos is waving around which I haven't seen yet.

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THE COURT: For the record will you give your full name, Mr. Hill?

MR. HILL: My full name is Donald M. Hill, Principal, Peat, Marwick & Mitchell.

[11] THE COURT: All right, go head.

MR. HILL: You know, as you stated, we commenced our Phase I study during the middle of October. We presented the results of our Phase I study on December 11th and the findings of our Phase I are included in this document as Appendix A.

What is key to today's discussion and the lengthy discussion with the committee are the results of our Phase II study, which presents a complete economic and financial analysis of the core plan submitted by the Trustee.

What we have presented in this report is our independent assessment, utilizing the information provided to us by December 28th, as contained in the various notes of the Trustee's plan. And our own independent information, other sources of information available from the Interstate Commerce Commission and the Association of American Railroads.

We essentially analyzed two key cases. We did a detailed analysis of the core as presented in the Trustee's plan. We did find it necessary to make a number of corrections to make sure that all of the information was presented in a complete and final form. We completed an independent analysis to determine the economic return, what we call the internal rate of return, and we did a [12] loan repayment analysis based upon what we projected would be the

cash flow over the period of 1980 to 1986, in inflated dollars, which is the basis on which loans are essentially repaid. We did have to make some assumptions as to what the interest rates would be in the loan repayment period but we essentially tried to adhere to the assumptions that were incorporated in the Trustee's plan.

Peat, Marwick, Mitchell and its engineering sub-contractor TAD did an independent analysis of the various assumptions that are incorporated in the Trustee's core plan.

Now on Page X-8 we present our analysis of the Trustee's core which we have entitled The Adjusted Trustee's Core. We have applied our own independent assumptions with regards to various aspects of the operation, mechanical engineering and financing, car hire and other important topics.

We have presented in our report what we believe are the more reasonable and appropriate assumptions that should be used in carrying out an economic and financial analysis.

To essentially summarize the findings, it is our finding that the internal rate of return in loan repayment capability of the adjusted Trustee's core, using our independent assumptions, of operations and cost incurrence, [13] mechanical, engineering and freight car revenue point of view, we find that the internal rate of return and loan repayment capability are clearly unfavorable. We find that the internal rate of return from an economic sense is less than zero percent. We find from a loan repayment point of view there appears to be little opportunity to pay debt that would have to be incurred associated with start-up working capital, and a significant amount of rehabilitation that exceeds 115 million. That would have to be programmed over a period of five years.

When we carried out this analysis there was very extensive discussions with respect to the appropriate traffic projections. There were lengthy meetings and discussions

with the committee to arrive at a consensus opinion on the traffic projections, based upon the original work performed by the Rock Island regional sales managers. Our analysis of the adjusted Trustee's core applies that consensus opinion on traffic projections. There are a number of reasons why those projections tend to be on the optimistic side. There is uncertainty as to who the connecting carrier will be at Council Bluffs. It is pointed out in the analysis of the regional sales managers that if there is an unfriendly connection at Council Bluffs, then it does raise serious questions as to the retention of an important portion of the traffic at that gateway. [14] It is also the issue with regard to growth in the economy. In our projections of traffic we have used a compounded growth rate of 2 percent per annum with respect to traffic growth, beginning with the estimated retain traffic on the core system, and essentially assuming that the benefits of the growth in the economy will be achieved in the operation of the core.

We all know that during the last quarter of this year carloadings, naturally, declined 4 percent, where on the average for 1979 they did increase by more than 2 percent. It is projected by a number of sources that there will be a decline in carloadings during 1980, and again it raises the question with regards to the projections of traffic.

With these concerns in mind we analyzed two lower traffic cases to determine what the sensitivity of the economic and financial analysis would be for the core system. We presented additional cases which provide the calculation of the internal rate of return and the loan repayment capability for the core system. With these lower traffic cases we continue to have very little economic value with regards to the core system. The internal rate of return continues to be less than zero and the magnitude of the loans outstanding at the end of 1985 would continue to increase and would be in excess [15] of 250 million at that time.

Based on the evidence we have at hand, which is the information provided in the Trustee's plan filed on December 28th, and other independent information we have, it is our conclusion that we have presented an economic analysis and financial analysis based upon a reasonable and appropriate set of assumptions. The question was raised this morning as to whether if additional information was available would we, Peat, Marwick and our engineering consultant, TAD, we view that with the possibility of re-casting our study. And like all professionals in this field we remain prepared to review any additional information that might be available to us and to provide our own independent opinion.

THE COURT: Were you made aware of the nature of the additional information that was being discussed?

MR. HILL: There was essentially three additional items of information that were mentioned to us that might be made available in the future. There was a question with regards to the engineering costs. This is the cost associated with normalized maintenance and maintenance of way. It was pointed out to us that we might have a duplication in the manning tables that we incorporated in our adjusted assumptions. We are waiting to receive that additional information. We do not think, however, [16] that that information will have a material effect on our findings.

It was also pointed out to us that there may be additional information provided to us in connection with a future coal move that would commence in 1982. It is called the Muscatine Coal Move. We utilized, in terms of 1978 dollars, an estimate of 9 mills per ton mile. That was essentially the industry average that was experienced and documented in various studies, as an average coal rate that a railroad would receive for moving a ton mile. The Trustee, in his

plan, had estimated that rate to be 17 mills per ton mile. So we are awaiting further evidence to document while he believes the 17 mill rate for that particular coal move would be appropriate, where in fact it is considerably higher than the industry average that was experienced in 1978.

THE COURT: You did take the possibility of this coal move into contemplation in your study but at a lower rate?

MR. HILL: Yes, but at a lower rate, your Honor.

THE COURT: All right, go ahead.

MR. HILL: The third area has to do with the question of car hiring and car rental. As a result of reorganizing around the core, beginning in 1980, this year, there would be a significant surplus of cars. It is the Trustee's plan [17] that all of those surplus cars would be made available to foreign railroads. They would be leased on a favorable basis that would generate significant revenue for the core. We did a very detailed analysis of the assumptions with regards to the leasing of that surplus car fleet, and we did a detailed analysis of what the future incurred car leases would be on foreign cars used on-line by the core system. We have presented new information that was made available by the American Association of Railroads with regards to variation in the average number of car miles per car day. We have utilized that in our analysis as well as other independent assessments to arrive at a series of adjusted assumptions with regards to car hire and car rental. We wish to point out in the Trustee's core, in the developing of his report this information was not available and used an industry average of 59 car miles per car day. So based upon additional information that was available to us and based upon our own independent analysis and concern that every car day off-line might not necessarily earn the expected revenue, we did make adjustments in the assumptions with regard to these two particular items, and it

results in a change in the revenues that would be incurred from car leases and the expenses that would be incurred from car hire.

THE COURT: The anticipated revenue under your [18] assumptions would be smaller?

MR. HILL: It would be smaller, your Honor, and the car hire expenses would be larger.

THE COURT: This is not an instance where the Trustee suggested in the meeting today that he has still further information that you should consider but rather an instance where I assume that he disagrees with your assumptions?

MR. HILL: This morning essentially they said that they would like to have further time to study our report, which they received yesterday. They raised some questions about our assumptions. Your Honor, we essentially used two independent approaches ourselves, Peat, Marwick and TAD to arrive at an estimate. The more analytical approach that was used by TAD, based upon historical information, was the final estimate we used, which in our opinion is the appropriate estimate to use.

So, without further evidence available to us at this time we essentially stand by the findings and conclusions that we have presented on Page X-8.

THE COURT: Thank you, Mr. Hill.

* * *

[20] MR. MANOS: Your Honor, what I am suggesting is the following: Quite obviously it will be impossible to [21] address the matters that are contained in the PMM today. The Trustee's staff would like to review those matters. Not necessarily in an adversary sense, but in a sense of responding, for the Court's attention and the best interest of all the parties, responding to the PMM study so that everybody would have a complete picture. The Trustee's plan contains a core study. We believe now that the plan

should go to the Commission on February 5th, on or before, as the Court has decreed. If any modifications are suggested by the creditors that would be supportive of the PMM study. They should come to the Court. If there are any alternative plans which they wish to propose they should come to the Court. When all of these matters are filed with the Court, then the Trustee's plan, all of the alternate plans, suggestions and modifications, along with any other comments that the Court perhaps would wish to make to the Commission, should be transmitted at that time.

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[23] MR. BROADLEY: Your Honor, I suggest that we have come to the end of the road with the independent core railroad.

We began this process of selecting an independent consultant about a year ago, as I recall it was sometime in February, 1979. After a long series of twists and turns, Peat-Marwick commenced the analysis of what the Trustee identified as the core that was viable. We have a report by Peat-Marwick. The conclusion [24] that Peat-Marwick, the independent consultant reached, as set forth on Page X-8, in the last paragraph thereof. Let me recall that those conclusions are based on the most favorable traffic assumptions in which the core railroad would obtain the benefit of increased traffic through economics, and what we call the main traffic. Traffic which may be available if additional equipment is available. In addition the core had the benefit of a favorable connection at Council Bluffs, a friendly connection at Council Bluffs and the conclusion that the independent consultant reached was that that core with that favorable traffic assumption was not viable. Changing the traffic assumptions to less favorable cases makes the situation extremely bad.

The Trustee has submitted a plan of reorganization which is centered upon a core railroad operated by the reorganized, or a reorganized company. It is our position,

and I believe the creditors are also of this opinion, that in view of the conclusions reached by Peat-Marwick, it is a waste of everyone's time to refer this plan to the Interstate Commerce Commission, since there is a very fundamental defect in its underlying assumptions, that that is a viable core railroad which can be operated by the reorganized company.

I think we should all be aware of two very [25] significant dates that are coming up. The first date, and the last in time, is March 2nd, when the current directed service order expires. The earlier date is the 1st of February, when under the 401 process of the Federal Railroad Administration we should be getting very serious indications from potential purchasers of the various segments of the Rock Island. We believe the time has come or will come very shortly after February 1st when the parties in interest to this proceeding can start presenting or getting together a viable plan for the sale of the entire Rock Island Railroad. That a plan which recognizes that there is no viable core which can be operated by a reorganized company.

Let me back up and tell you what we are proposing. What we are proposing is that the Trustee withdraw his plan as fundamentally flawed. And that the Court direct the parties to submit by February 11th proposals for the sale of the entire Rock Island. By February 11th the Government and the creditors and the Trustee will have the benefit of the February 1st submissions. In other words, we will know who is interested, or if anyone is interested in, shall we say, the present packaging, and I think it is no secret that one of the present packages is the core. After February 1st we will know whether anyone is interested in that package. If no [26] one is interested in that package, repackaging might be necessary. And the Trustee suggests well, everyone file his plan. The creditors plan the file of liquidation, he has his plan of reorganization, and we send it all off to the Commission. If we have

no bidder for the core on February 1st, how are we going to repackage it. Are we going to repackage it and litigate before the Commission for however long the Commission proposes to take to decide itself whether the core is viable. We are suggesting that after February 1st if repackaging of the core becomes necessary it has to be done very quickly in order to make appropriate adjustments on March 2nd to insure that essential service in the core area continue. The nature of the adjustments, the nature of the provisions for continued service are going to depend very much on the nature of the interest expressd on February 1st. We don't think, at least the Government doesn't think, and I don't think even the creditors believe, that there will be anything but confusion and delay caused by submitting three, four or five competing plans, including the Trustee's plan, which contemplates a continued operation of the core by a reorganized company to the Interstate Commerce Commission. That is the formula for delay.

We urge the Trustee to withdraw his plan. The Government is willing to work with the present creditors' [27] committee to attempt to devise some guidelines for the structuring, or the sale of all of the assets or all of the real assets of the Rock Island, and if necessary repackaging the core. Thank you very much.

THE COURT: Mr. Broadley, I have a question or two that you might be able to help me with.

I am not at all confident that on March 1st, or whatever the date for bids is, that we are going to get anything meaningful.

MR. BROADLEY: February 1st, your Honor.

THE COURT: February 1st. If I were a railroad interested in some segment of the Rock Island, viewing the uncertainty of its future, the expiration of a directed service order on March 2nd, the very real prospect that the Commerce Commission means what it is apparently saying,

that the Railroad will cease operations on that date, or maybe embargo—I would sort of wait and see what would happen at a distress sale some time later rather than make a serious bid on an operating entity in a reasonable state of maintenance with the hope that I would get a better bargain. Without any experience in railroading, I would say that this is true in any similar situation. I wonder if it is not true that we aren't going to find that February 1st that we get anything very helpful by the way of bids.

[28] MR. BROADLEY: Your Honor, there are a lot of considerations that obviously are going to affect the potential acquiring of railroads, and I don't intend to be an expert in those considerations.

I think with respect to the non-core lines, whether they submit, shall we say, meaningful bid on February 1st, or wait to see what they can pick up later, is not really too significant from the point of view of the creditors of the Railroad. A large part of the non-core operation is already, at least tentatively, sold to the Southern Pacific. There has been some interest, certainly by the Southern Pacific, in at least an operating portion of the Sun Belt Line. The real problem, both for the public interest, and I suspect for the financial interest of the Estate is the core. I have got to admit, there is some concern that there may not be a meaningful bid for the core. I think to proceed with the Trustee's plan, which essentially is open—there is the option of keeping the core going as an entity for some railroad, six, seven, eight months down the line to pick up at a distress sale would be alleviated. The problem would be alleviated if we had the ability, the meaningful ability to repackage the core. I think anyone interested in bidding for the core has a couple of factors in his mind. First of all, it is in his interest to pick up a going [29] concern rather than something that has been shut down for two, three, four months. Second, he is going to analyze the alternatives. Now again I don't pretend to be able to see into the

minds of the various railroads that might be interested in acquiring the core. I think that one alternative is that the core be repackaged instead of being there, or sold as an entity. Real efforts be at least in the wings to sell line A, line B and line C separately, which may be more attractive to different carriers. That that possibility itself might have some influence on a potential acquirer of the entire core.

THE COURT: I recognize that that is possible.

My second question is, Mr. Manos suggested in his recent comments and my admittedly very fast scanning of the proposed plan suggest that it is not a plan which focuses exclusively upon the continued operation of the viable core, but it admits the possibility of the total liquidation. Therefore it serves already the purpose that you would suggest of my rejecting the core concept.

MR. BROADLEY: Your Honor, I have heard that from Mr. Manos and the Trustee on numerous occasions. I must confess I am not quite sure what they mean by it. The plan clearly contemplates a reorganization of the Rock Island around the core railroad. It doesn't contemplate the Trustee going to work tomorrow morning and putting [30] 100 percent of his efforts into selling the core. Or if no one is interested in the core, into the selling line from A to B. I think what we are talking about is really a very substantial, very meaningful difference in emphasis. That the plan, the heart of the plan is keeping the core as an independent railroad, reorganizing the company around it.

What we should be doing, what is in the interest of both the creditors and the public, is to pull all of the Trustee's efforts, all the efforts of the parties into disposing of these properties. The public interest requires that certain lines continue in operation. I would be less than candid if I didn't admit it. We are very interested that certain areas, particularly on the core, continue to be served. The credi-

tors are interested in maximizing their return, and I think one aspect of that is getting rid of the core as quickly as possible. Since there is a potential that they might incur some losses if the Trustee resumes operations. I will let them speak to that.

But given the real issue, it is the emphasis of the Trustee's effort, the emphasis of the Court's effort. Sending the present plan [of] reorganization to the Commission is counter-productive, we believe, both to the public interest and to the creditors' interest. We believe that [31] in view of the PMM report, the Trustee should voluntarily withdraw his plan and the Court order that the parties submit their proposals by a date reasonably far after February 1st, that we can submit a meaningful proposal based on the knowledge of what comes out on February 1st.

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 75 B 2697

In the Matter of:

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY,
Debtor.

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled matter before the HONORABLE FRANK J. MC GARR, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois on Friday the 25th day of January, 1980, at the hour of 2:00 o'clock.

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[56] MR. BROADLEY: In connection with preparing a proposed order I had a discussion with Mr. Rush yesterday about the position the Commission would likely take if your Honor entered an order directing the Trustee to withdraw this plan. Mr. Rush indicated that if your Honor entered such an order the Commission, in all likelihood, would not find it expedient, necessary or proper to appeal that decision on jurisdictional grounds. And the Commission has frequently expressed concern about the exercise of its primary jurisdiction. Mr. Rush's indication to me was that if your Honor finds that the plan has no merit and decides that you should order the Trustee to withdraw it, [57] that the Commission would acquiesce in that decision.

THE COURT: Which means they wouldn't appeal it, in fact, thank you.

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[66] [MR. BROADLEY:] First, I would like to say that the Government subscribes in large part to the presentations made by Mr. Moritz and Mr. Murray. As I said on Wednes-

day, the Peat-Marwick report demonstrates that we have come to the end of the road. For this Court to refer the Trustee's plan, which as I think all parties have conceded, is a plan of reorganization around a viable core, notwithstanding Mr. Manos' assertions to the contrary, will be to do a [67] futile act. And it is our contention that Section 77 does not require the Court to do a futile act.

* * *

MR. BROADLEY: The second area I would like to address is what type of relief—what should the Court do now. I think, surprisingly, the Government and the creditors are in fairly good agreement. I think first we have to lay to rest the Trustee's viable core. The Court should enter an order directing the Trustee to withdraw his plan.

Secondly, we believe the Court should direct the Trustee to file, by no later than the end of February 8th, possibly February 11th, depending on the Trustee's schedule, a preliminary plan of liquidation which sets forth in fair detail those lines of the Rock Island for which the Trustee has received offers to purchase. And [68] some brief summary of the offers which he has received. Secondly, it should set forth those lines which have not been the subject of offers to purchase, but which the Trustee reasonably believes will be the subject of such offers within a fairly short period of time, or upon which negotiations are actively in progress.

Third, the Trustee should identify those lines of the Rock Island which have been the subject of offers to undertake voluntary operation after March 2nd. Having filed the plan of liquidation on February 8th, or the preliminary plan of liquidation, we think that at this stage of the proceedings to confuse what we do with the Railroad, with the rail assets, with how we pay the various claims against the Estate is going to unnecessarily complicate what is already a very complicated operation, the payment of various claims, whether the absolute priority rule requires that Mr. Moritz' clients be paid before my clients, can usefully

be deferred for some period of time. However, we think the Court should then set another hearing, fairly quickly after the Trustee has filed his preliminary plan. At that hearing we should consider what steps are to be taken to implement the Trustee's preliminary plan.

I would like to call to your Honor's attention that under the Milwaukee Road Restructuring Act, that the Court can set time limits for the I.C.C.'s consideration [69] of an abandonment. In fact the Court is not bound by the I.C.C.'s recommendation on abandonment. Though it must refer them, I believe, to the I.C.C. for consideration.

Secondly, the Court can set time limits for the I.C.C.'s consideration of proposed sales. There I believe the Court is bound by the I.C.C.'s decision on whether a proposed sale should be consummated.

Third, the Court should consider whether to permit operation over the lines of the Rock Island by prospective purchasers, which the MRRA gives this Court the authority to do.

What is the advantage of this filing a plan of liquidation quickly, identifying the sales, and letting people know that by the middle of February this Court is going to be giving the Trustee directions on how to proceed to implement it. It comes back to the point your Honor was making on Wednesday. Why should any prospective purchaser come to the front on February 1st.

Your Honor, the fire sale is now, and we have to bring it home to prospective purchasers of lines of the Rock Island that if they want to buy February 1st is the time to get their bid in, their best bid and to identify what they want and the terms under which they are willing to take it. The problem with sending the Trustee's plan to the Interstate Commerce Commission is that it leaves [70] open the prospect of the Trustee concentrating his efforts on the viable core rather than on concluding sales. It is a very

natural reluctance. If I were, for instance, in the Trustee's position, and arguing the Interstate Commerce Commission, that this core is viable, I find it very difficult to go out and aggressively negotiate sales of the various components of it. It is just not human nature to be able to go on the one hand to be aggressively arguing for something in which the Trustee apparently has a great deal of faith, and on the other hand negotiating sales which will completely frustrate any viable—any core which will be operated by a reorganized company. The advantage of moving ahead with the liquidation now is that it identifies those portions of the core which can be sold. It is quite possible that on February 1st we will find that no one wants to buy the whole core, yet that certain lines in the core which are essential, which are essential to the State of Iowa, essential to certain shippers, could well be the subject of interest, of offers by prospective purchasers.

On February 19 the I.C.C. has, I believe, requested the comments of interested parties on what to do about the impending March 2nd shutdown and possible continuation of the DSO. The I.C.C. would be in a much better position to assess what it is going to do with [71] respect to maintaining service on some lines of the Rock Island. I think it quite clear that the I.C.C. has no intention of maintaining service over the entire Rock Island. I think the clear import of the action that was taken in December is that the 90 days for the entire system is it. And that the creditors, the Estate, should be using this opportunity of identifying the lines that they can sell, going to the I.C.C. If you have a prospective purchaser who wants to voluntarily operate the line, fine. Let him take it over on March 3rd. Though I must point out that it is quite possible that there will be implementing problems with voluntary operations. I believe the Milwaukee is running into them right now with the labor unions.

With respect to other lines which the Trustee feels have a good possibility of being sold, and indeed which might

be the subject of offers, one could always argue to the Interstate Commerce Commission that in order to maintain essential service a DSO to the prospective purchaser might be in order. And the value to the Estate, the value to the creditors of selling operating lines as opposed to selling—as opposed to having lines which have rusted rails, is very great.

We hear a lot about liquidation values, scrap values and salvage values. I have had the unpleasant experience of being associated with a valuation case in [72] a special court. Salvage values and net liquidation values are very femoral things. When you start looking at what the word net means, what the deductions, what the costs are, what the over-the-fence values of the right-of-way in Iowa is—there is very often not a great deal there. So the creditors, the Estate, and certainly the public are much better off if we can identify what can be sold as a going concern as quickly as possible, put as much pressure as we possibly can on the prospective purchasers to come to the front on February 1st to identify what they want, how much they are willing to pay, whether they are interested in taking over voluntary operations, and on what conditions it will be operated voluntarily and getting the information before the Court as quickly as possible, and getting the information before the I.C.C. as quickly as possible so that as February comes to a close the I.C.C. can decide whether a case can be made for directed service, limited directed service on a few essential lines. I am afraid that sending this plan to the Commission is going to frustrate that identification of sales of lines within the core. It just does not, as I said, it is not human nature for the Trustee to be working on destroying the very system that he is arguing in favor of before the I.C.C. Thank you.

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[93] THE COURT: I think I have heard enough of what has probably been the best oral arguments I have had the

pleasure of listening to from the various attorneys involved in this case. I think I have heard enough, in addition to having studied enough of the proposed plan of reorganization and the viable core and the Peat-Marwick study to reach a conclusion which I intend to announce concerning the matters that have been debated here today.

Preliminarily, though I find it disappointing in this focus on whether I should substitute my judgment [94] for the Interstate Commerce Commission, and decline to forward a plan to them that the Commerce Commission is not represented here. I regret that fact and candidly don't quite understand it. They have been here on other occasions when their presence was much less helpful than it would be now.

Let me indulge in a little bit of reminiscence and history about the Rock Island since the fateful St. Patrick's Day when it first came to my attention.

I appointed as Trustee and attorney for the Trustee two gentlemen in whom I had a great deal of confidence and my confidence in them has never diminished, and I have over the years indulged their sincere hope and expectation of an income based reorganization of the Rock Island. I have admired the Trustee's resourceful effort to achieve this, and I think with the creditors I shared his frustration, when an extremely difficult winter, and rising fuel cost, and disappointing traffic statistics intervened to really doom those efforts and to bring us to a state of cashlessness which we faced some several weeks ago. I have always indulged the hope of what I think is probably the gist of what I expressed before the Senate Committee that Congress would see its obligation if the public interest were really to be served here, to address its attention to the Rock Island as it did to the [95] Eastern Railroads which were the result of Con-Rail to the passenger service, with the result of Amtrak, and to the recent action to the Milwaukee, with sufficient help to bring about what I think was what Mr. Gibbons once described as Farm-Rail, which I

thought was an excellent term to describe what I hoped we could achieve here. I watched the attempts of the Trustee and his counsel to sell off segments of the Rock Island, and have been disappointed, with one happy exception, there have been no tangible results from that acitivity [*sic*], despite strenuous efforts.

I pushed Mr. Manos, in terms of timetable, in the filing of a plan of reorganization to the point where when I saw him on the street and noted his declining weight I had a severe attack of conscience because I was afraid I was driving him into bad health. I have listened to the Trustee for years through his counsel argue that I authorize and continue to be patient with the attempts to bring about a cash-based reorganization, based upon my finding of reorganizability. Mr. Manos argues in an abundance of emotion today that I should not decide that issue in four hours. I have in fact thought of very little else for four years. It has been the basic issue that I have confronted and the issue which I have had to decide over and over again as circumstances changed.

The concept of liquidation of a railroad [96] means tremendous hardship, economic dislocation, the public interest has always been on the side of my hope of continued operation, if not in whole or at least in part of the Railroad. I have until now balanced the equities of the rights of the creditors against the public interest in favor of continuing operations. I have watched the Trustee do what I regard as a masterful job but it has not succeeded because success was not possible as somebody argued today, except under a set of perfect economic and social circumstances, and life being what it is that perfect set of circumstances never came to pass.

I have had an opportunity to go over the plan of reorganization. It is not a liquidation plan. It is a plan for reorganization of a proposed viable core. Liquidation is there only as an alternative possibility, as the creditors have

argued, and the details of a plan of liquidation might be quite different than the details of a plan of reorganization, particularly in the area of priority and creditors' rights. So we have a basic reorganization plan which acknowledges the possibility of liquidation but is not a liquidation plan.

We went through a lot of travail, all of us, spent a lot of hours, missed a lot of dinner dates in constructing the framework for the final appointment of a Court's witness to determine the possibility of [97] reorganizability. And we wound it up in the unusual position of having, because of the intervention of cashlessness, having to force the filing of a plan of reorganization at about the same time as we were completing a study as to the potential of reorganizability so that the plan and the Court's witness study reached me at approximately the same time.

I have studied the plan of reorganization, as I said, and I have studied the Peat-Marwick report, my own witness. I am satisfied that the witness that the parties recommended to me and whom I chose has done a fine job. It is a good study and I am compelled to accept its conclusions. This being so I am compelled also, if logic prevails, to accept the conclusion that the plan of reorganization proposed by the Trustee has no hope of success.

The Trustee is therefore instructed not to forward the plan of reorganization to the Commission. The Trustee is instructed to continue his present plans for cessation of operations by the time of the anticipated termination of the directed service order with the hope that that might be extended, and the Trustee is instructed to prepare and file with the Court a preliminary plan of liquidation by a date which I will let him pick since only he can tell me how much time he thinks is necessary for [98] him to do that.

Before I finalize that order I would like to say that this ruling, in my judgment, means only that the final and inevitable decision that I have just made will have little

effect on the public interest. It does now what would inevitably be done in a matter of a few months and it starts now rather than later the process of private sale and Commerce Commission reorganization of railroad service in order to patch together the best possible compromise between the public interests and the creditors' interests. And I guess it finalizes what will be the last chapter in the long and regrettably sad history of the Rock Island.

That will be the order based on the motion made today, and I would ask Mr. Manos, if you care to comment now or wish to reflect on it how much time you think it would take to prepare a liquidation plan which will be a modification I would guess of your reorganization.

* * *

[100] THE COURT: There comes a time in any course of events when the end is inevitable. The creditors would insist that I am long overdue in recognizing that fact. Be that true or not I do recognize it now. I think the possibility of a continuation of the Rock Island on an income producing basis, whether in core or in whole or in part, I must inevitably conclude is just not possible and that is the basis of my decision. I must say that that decision was finally reached, or I was forced to it by a combination of the PMM study, my own witness, and I think a good one, and the arguments that I listened to today.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 75 B 2697

In the Matter of:

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY,
Debtor.

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the HONORABLE FRANK J. MC GARR, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Monday, April 14, 1980, at the hour of 2:00 o'clock P.M.

[4] MR. MANOS: Your Honor, there is an application, which has been drafted and, jointly, is being presented by the Trustee and the creditors representing the indentured trusts, as well as the Crown interests. And we believe it is a perfunctory application that already has been decided with reference to the discontinuance of all operations over the entire Rock Island system, and a mere confirmation of the Court's previous orders with respect to that matter, but the petition, as presented to the Court, by reason of Mr. Rush's statements, that were made to this Court on one of the previous status report occasions joined in by Mr. Rush in stating that unless, under the Milwaukee Restructuring Act, there is a pronouncement or a report of the Commission to the Court—this being an advisory report—that they considered, at least, that the Rock Island still had common carrier obligations.

For that reason, and in order to present a housekeeping —what I characterize as a housekeeping petition, we do present this to the Court at the present time.

We are asking that the Commission—since this would appear to be a very simple and perfunctory application—report back to the Court within fifteen days from the date of the filing of a limited application [5] or reduced-in-size application, by reason of our known circumstances to the Commission, and that the matter be heard at this particular hearing, which we recommend be somewhere approximately twenty to twenty-five days down the road from this date.

I believe that the Trustee would need approximately five or six days in which to prepare the application. We believe that the Commission should respond, by way of an advisory report, to the Court, as required under the Milwaukee Restructuring Act, within fifteen days. And we believe that, shortly thereafter, the Court should set the hearing for its decision, as required under Section 17 of the Milwaukee Restructuring Act.

Is there anything that the creditors wish to add?

THE COURT: Mr. Broadley and Mr. Rush are here.

Perhaps, Mr. Murray, if you want to say amything [*sic*] first, you may go ahead.

MR. MURRAY: Your Honor, this petition is being presented to the Court at this time, because of some of the concerns that were expressed by Mr. Broadley and Mr. Rush at an earlier status report.

I think I can speak for the other creditors, as well, when I say that we do not concede, that an order is necessary from the Interstate Commerce Commission in [6] order to end the common carrier obligations of the Rock Island. The fact of the matter is, that within the last year three events have intervened that have really necessitated the cessation of operation by the Rock Island.

In the first instance, the Rock Island was affected by the strike, which shut down most of its operations. That was

followed by an order of cessation of operations and a directed service order by the Interstate Commerce Commission, because the Commission found that the Rock Island was cashless. And, as recently as last week, the Commission confirmed the cashlessness of the Rock Island in an order that it served in connection with temporary operating authority. Thirdly, your Honor issued an order on January 25, 1980, indicating that the Rock Island could not be reorganized under any circumstances.

We believe that the cummulative effect of these three events totally absolve the Rock Island from any common carrier obligation.

However, to avoid any question in anybody's mind about the common carrier obligations of the Rock Island, we have presented this petition to your Honor.

We join in Mr. Manos' request that a date be set for a hearing under Section 17 of the Milwaukee [7] Railroad Restructuring Act.

We would, respectfully, suggest that the Trustee be given five days in which to prepare an application for abandonment; that the Commission be given fifteen days thereafter, within which to return to your Honor a report with its recommendations on this abandonment; and, finally, that a hearing be set, twenty to twenty-five days from today, to be preceded by notice, in accordance with Section 17(a) of the Milwaukee Railroad Restructuring Act, and the relevant provision of the Bankruptcy Act. All of these are set forth in the motion, your Honor.

So we would respectfully suggest that your Honor grant the petition. We do not believe that the petition is absolutely necessary, but in order to avoid any question in this particular circumstance, and to advance these proceedings along, we have presented the motion today to your Honor.

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[8] MR. RUSH: First, let me say that I think the Trustee and the creditors are on the right track, finally.

Secondly, I think it is important to note—and I trust it was a slip-of-the-tongue from my friend, Mr. Murray, although he is normally very careful about these things—the Commission's order in September was not an order to cease operations. We did enter a directed service order, because of the apparent inability of the Rock Island to continue to fulfil [*sic*] its common carrier responsibilities.

Finally, with respect to your Honor's order of January 25, 1980, that liquidation should commence, I would simply note that the New Haven case and the more recent decisions of the Special Court under the Regional Railroad Reorganization Act make it clear, we submit, that even once this determination is arrived at, appropriate authority from either the Commission or state regulatory authorities to abandon is, nonetheless, required.

So that we are back where we were, but for the fact that I do agree that it is proper to proceed in the manner which the Trustee and the creditors intend to proceed. With an exception—which I have difficulty [9] in addressing, because, quite frankly, Mr. Manos and I discussed this for the first time a little before noon—I was handed the petition as I sat at the table, so I am not in a position to advise your Honor as to the amount of time the Commission would deem necessary to render a meaningful advisory report to this Court.

I will say that we have been able to report to Judge McMillen, in the Milwaukee case, on a schedule of 120 days from the date of filing. Whether it could be done more rapidly in this case, I am not prepared to advise the Court at this time. But if it is possible, I would urge the Court to hold, at least, the scheduling order in connection with this petition, open until such time as we have been able to make a determination as to how rapidly the Commission can possibly handle an application and report back to you.

I believe that is all I have to say with respect to that.

THE COURT: Fine.

Mr. Broadley, I assume you have nothing to add to that?

MR. BROADLEY: No.

THE COURT: Mr. Manos?

MR. MANOS: Your Honor, just by way of response to Mr. Rush, on the one procedural aspect of 120 days in the [10] Milwaukee case versus the fifteen that is being suggested in the petition before the Court, I perceive that the Milwaukee case is really comparing apples and oranges. In this case, particularly, there is absolutely no operation that is being conducted by the Rock Island; there is no core operation, before the Commission, on a plan. The history of that is extremely well known to everybody—and the participation of the Commission and the F.R.A.—with respect to that particular matter. The liquidation is proceeding. And the Trustee has neither the rolling stock nor the employees, I might add, with which to conduct an operation.

So that I fail to see why an advisory report of this nature would require more than just a few hours to handle.

In the Milwaukee case, by way of comparison, we have a completely different matter. We have a plan before the Commission that deals with an operating railroad with seriatum [*sic*] considerations of abandonment in particular segments of the railroad. We don't have this here. Here we have a total system that has now ground to an absolute halt.

All we are asking is a confirmation from the Commission of its findings already entered to the effect that any reinstitution of this service, because of the [11] present circumstances of the Rock Island is considered to be impossible.

And also, with respect to Section 17, the Court has the authority to set the time frame. We believe that the time frame should be very short, so that everybody knows that there is absolutely no question in anybody's mind, either at any agency-level or shipper-level or creditor-level, that the Rock Island has been put to rest, as far as an operating carrier. So, your Honor, I would say that the schedule should be extremely brief.

The application to the Commission is going to be very limited. We will try to follow the rules, as established by the Commission, with, however, the suggestion of the Court that these be limited, because of the present circumstances of the Rock Island. We are not dealing with a segment-by-segment, seriatim abandonment approach. I know that there have been some seriatim abandonment orders entered by the Commission. Those have been furnished by the Trustee and, I believe, delivered to the Court. I suspect, in the next few days, that the Trustee and the creditors will look at those and we expect that those also will be presented to the Court, to be consolidated with the ultimate disposition by the Court on the total cessation and the total abandonment.

[12] For that reason, I am asking that the Trustee, and all of the parties in interest, be advised by order of this Court, very early on, as to where we stand with respect to the common carrier obligations.

MR. MURRAY: Your Honor, may I further respond?

THE COURT: Yes, Mr. Murray.

MR. MURRAY: Your Honor, we would join in Mr. Manos' comments. We fail to understand why the Commission would need 120 days to address an issue that is very simple and very cleanly presented to it.

On January 25th, your Honor ordered that the Rock Island should commence planning for liquidation. Prior to

that time, the Interstate Commerce Commission, itself, found that the Trustee was unable to continue its rail service obligations, and it was in that connection that it entered the directed service order. So it, itself, has already had most of the issues that this presents before it.

This is a very simple matter. And the Commission has had, since January 25th—and actually, since November of last year or October of last year—to consider the problems of the Rock Island as they are presented in their present acute form.

It is essential that all doubt on this question be resolved immediately, because we already have [13] lines of the Rock Island over which service has terminated, as a result of the expiration of the directed service order to the Kansas City Terminal Corporation. There is no temporary operating authority over some lines of the Rock Island, so if there is any doubt as to this matter, at all—and I submit that there can be no doubt as to it—but if there is any doubt in this matter, then the Commission ought to address the Court very promptly with that concern.

So we fail to see why there is a need to take 120 days or really any substantial period of time beyond the schedule that we have recommended to consider what is a very slean [*sic*] and simple issue, that can be addressed by the Commission very quickly. All we are talking about is a finding by the Commission that the Rock Island no longer has a common carrier obligation. Very simple form of abandonment petition.

THE COURT: Well, the Rock Island situation, of course is —and in its extremest posture over the last several months —has been well known to all of us. And the problems are of long standing. The cessation of operations, the cashlessness decision was originally initiated by the I.C.C. and the F.[R.A.], who joined in the—together brought about the directed service order and urged me to declare the cash-

lessness position, at a time [14] when it was apparent that that was the factual situation.

I am concerned that undue delay will delay the liquidation process, which is in process now, and which I want to continue without any abatement.

I will order the Rock Island to file its petition with the Commission within ten days and the Commission to give me its advisory response within thirty days. I think, under the circumstances, that is appropriate and reasonable. And I am sure the Commission can do it.

Then, I assume, we should set a date for hearing on that. I don't think it will be so cut-and-dry that the parties won't want to speak on the subject. It may well turn out that way, but in an abundance of caution, let's set a hearing on it.

MR. MANOS: Your Honor, does the thirty-day clock on the Commission begin as of today's order?

THE COURT: No, it begins after your petition, so they have forty days, in effect.

Mr. MANOS. From today?

THE COURT: Yes.

MR. MANOS: Thank you.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 75 B 2697

In the Matter of:

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY,
Debtor.

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled matter before the HONORABLE FRANK J. McGARR, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Monday the 2nd day of June, 1980, at the hour of 2:30 o'clock p.m.

* * *

[2] THE COURT: There's a motion to confirm the discontinuance of operations, which I hastily entered and continued to June the 2nd in order to give the Commerce Commission time to file its report on that subject.

MR. MANOS: That's correct, your Honor.

THE COURT: I agree that that's a matter of number one priority, so let's address ourselves to that and that only for the time being.

MR. MANOS: There is no need for me to recite matters that have taken place for some years in the Rock Island proceeding. These are matters of record before the Court. [3] If any evidence is required alluding to the record of the five years of the operation of the Rock Island, I might say the valiant efforts of this Estate to reorganize on an income basis can be examined.

On April the 14th, as a consequence of the previous cashlessness, the financial condition of the Rock Island, the strike, and all of the other matters that preceded the cash-

lessness and the finding of cashlessness by the Commission, the Trustee, in conjunction with the creditors of the Estate, the indentured trustees and the Henry Crown interests, filed a motion in which they asked the Court for a confirmation that indeed the total line and the total system of the Rock Island was abandoned, that there were no further common carrier obligations and that all operations are ceased and terminated forever more.

The Court then ordered the Trustee to file an application with the Commission for its advisory report relative to confirmation of this, a confirmation of the abandonment, confirmation of the cessation of the common carrier obligations, and asked the Commission to render its advisory report as prescribed, or as described under Section 17 of the Milwaukee Restructuring Act within 30 days, which the Commission has done. The Commission reported before your Honor and essentially the Commission [4] has confirmed that indeed there must be a total abandonment of the Rock Island System, and that there is and has been for some time total cessation of the services of the Rock Island, but recommending to the Court that certain portions of the system, as outlined in he Appendix D, be withheld for a reasonable period of time pending a possible sale or conclusion of successful negotiations with the Trustee to acquire those points and segments.

Many shippers filed their comments with the Commission, many state agencies, the FRA filed their comments, additional comments were filed with the Court, as the Court is aware. The RLEA has filed comments with the Court in a brief which bears on the matters before the Court this afternoon and on the question and the issue of whether labor production [*sic*] is something that this Court should impose upon the Estate as prescribed under Section 17 of the Milwaukee Restructuring Act.

Comments were also filed by your Trustee and by the creditors in relation to the very same matters, in relation

to the matters contained in the abandonment application and the hearing today relative to the abandonment and also on the issue of whether the labor protection is a burden that must be imposed upon this estate.

As a consequence, there is a condition of the total line abandonment and the total cessation of the [5] operations of the Rock Island.

So, your Honor has before you not only the report of the Commission, which incidentally conducted its proceedings and heard all of the parties in interest who wanted to be heard, but your Honor also has the comments of other responsible parties, employee representatives, shippers and other people present here today who are parties in interest that may desire to be heard.

As far as the Trustee is concerned, and, incidentally, in this position he is joined with unanimity by all of the creditors, the time has now come for this Court to confirm by its written order that indeed the abandonment has taken place, de facto has taken place for some time, since January 25th of 1980 and originally from September the 26th of 1979, when cashlessness was first acquired by the Commission and all of the operations were taken out of the hands of the Trustee, and that the cessation of operations now, coupled with the liquidation, essentially all of the assets of the Rock Island that are critical to any kind of an operation, all of the cars are gone, essentially, and you've got to have cars, you've got to have track and you've got to have employees. We've got track, it's in bad condition, but we don't have cars any more, your Honor, as of the day of the strike when that occurred back in August, we didn't have any employees [6] and, your Honor, we don't have any now, so that all of the elements exist for the entry of an order here today for the entry of an order of abandonment and a decree of abandonment confirming that these acts have taken place for some time, that the Rock Island no longer has any common carrier obligations

and since it does equitably, constitutionally and by precedent, there is no labor protection to be imposed as a condition upon this estate, because when an industry, an industry such as that of the Rock Island used to be in the common carrier business, when there is no business to be conducted, when there is no essential national policy that relates to the imposition of any labor protection against the estate after it is expired, the operation is gone, and then this Court must, in the opinion of the Trustee, and also shared by the creditors, there must be a decree of abandonment and no labor protection.

Thankfully, some of the employees have found, under what is termed now as the Miami Accord, employment with other railroads, so that the public interest there is served now, thank God. The other employees who are not so hired have other avenues of compensation. Hopefully they can find other jobs, and if they can't, they have the right to unemployment compensation status. But, as far as this Estate is [7] concerned, this Estate already has the burden of its creditors that are unpaid, your Honor knows that there are many, many millions of dollars of unpaid costs of administration that must be paid here as a priority, and for five years the creditors have stood by, with objections, not stood by without objections, but with objections, and have watched the public interest, in conjunction with the operation, consume this Estate to a degree now where constitutionally it's mandated that not only the system be abandoned, but that there be no labor protection and that a finish be written to the common carrier known as the Chicago, Rock Island and that a distribution be made of its assets to the extent that such can be made to its creditors.

Your Honor, I wish to make one reference as far as Section 77 is concerned, and whether this Court, in the exercise of its great patience over the five-year period, has fully discharged its duty and fiduciary duty that the Trus-

tee has discharged in order to bring about, if possible, an income based reorganization. The most recent history, as your Honor is aware, is that there was, pursuant to the Court's direction, filed a plan of reorganization that embodied a continued operation, a core. History is also replete and the record is replete with the fact that little support was received from the [8] public interest for this core. Nobody sprang forward to support at the time when it should have been supported, your Honor, a continued operation by the Rock Island, and perhaps this occurred because everybody was of the opinion that the Rock Island had arrived at a point on January 25th of 1980 where liquidation was the only solution.

In all events, the Trustee and the Court gave everybody the opportunity to spring forward, if the public interest so demanded, to support a core. No such support came.

As I stand here, your Honor, I feel that the Court order of January 25th in which liquidation planning was commenced and the plan was not sent to the Commission, was dictated by all of the happenings, the financial condition of the Rock Island, the failure of the public interest over the period of four or five years to fully support the track rehabilitation and other matters that might have brought about a successful reorganization, but all that is history.

We're here now where abandonment is required. The Commission advised the Court that it must occur. The Commission has advised the Court that operations are impossible.

Now, as far as labor protection, there [9] can be no labor protection against an estate that equitably cannot bear the burden, constitutionally should not be made to bear it, and by precedent established by the Commission, should not be made to bear it. Accordingly, your Honor, there is being submitted to your Honor this afternoon an order encompassing all of the matters that I have set forth in decree-

ing the abandonment, total cessation of operations, and also dealing with the matter of labor protection, that it's no longer an issue or burden on this Estate, but decreeing that there shall be no claim which shall be paid out of this estate, or funds to be borrowed for that purpose, for labor protection, since there is no requirement under Section 17 of the Milwaukee Restructuring Act that this occur as a condition of the total abandonment and the discontinuance of service.

Your Honor, may the record show that I present to the Court the order, which is being presented, a draft order which is being presented with the full knowledge, the acquiescence and unanimous support of the indentured trustee and the interests represented by Mr. Bert Jenner of Jenner & Block. It embodies essentially the findings, as I have described them to the Court, relative to the cashlessness, the inability of the Rock Island to reorganize and to operate, and also adopts the recommendation of the Interstate Commerce Commission that [10] for a reasonable period there be withheld those portions of the line that may have some reasonable expectations of sales to other rail carriers, and this reasonable period, your Honor, we recommend to the Court, be six months, a period of six months, the Trustee will in good faith negotiate with those carriers or other entities that wish to purchase portions of the Rock Island in good faith.

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[17] [Mr. CLARKE:] Now, the other point that comes up in this is the question of employees. We would submit, your Honor, that the I.C.C. consideration of employees can be considered nothing more than advisory at best. It said on one hand it is apparent that 17(a) requires protection. On the other hand, it said that there's another viable alternative to the core. We, of course, disagree that there is any viable alternative to 17(a), which we submit is mandatory and clear on its face, But, even so, before this Court can really get down to the whole question of employees and the

extent of the protection needed, the Court has to have a chance to look at the present structure of the employees, where their seniority is, how many are still left, what are the chances for those employees as a body [18] or as individuals getting employment on other carriers. The I.C.C. attached a report from the F.R.A. as one of its appendices to the report, which shows that a substantial percentage, 60-some-odd percent, I believe, of Rock Island employees would be offered employment by other carriers. We submit, your Honor, that the facts will show that that is not true, that has just not come to pass, that was an analysis of the situation in the best possible position back in January and February of 1980, which recent events, even under the March 4 hiring agreement have shown this as not happening. There are hundreds and thousands of Rock Island employees, their families and their communities, that can be without a source of income as a result of this entire line abandonment, and we submit that not only does 17(a), but also the public interest considerations of any reorganization under Section 77 requires this Court to consider those factors in making any decision on this matter.

Finally, I would submit, your Honor, or point out that we submit that 17(a), as indicated, is mandatory. The I.C.C. said that there was a viable alternative in a sense of no abandonment protection because of its prior practice in certain cases, namely North Hampton & Bath and the Wellesville case. There was also the most recent one cited by the Trustee in the order [19] which was just submitted to the Court. All of those cases are shortline railroads. In one in North Hampton & Bath, the company which owned it, the parent company, had a pension plan, which gave if not greater at least as equal as in the case that the New York dock [*sic*] conditions would impose. The Wellesville and Madison case was an extremely small railroad, and there was not the large public interest effect that you would have by an abandonment of this sort. In this case, there is a specific statute on point, namely 17(a), which displaces any

kind of precedent value that the Tennessee Central case might have had, again another shortline case. But, the thing that we submit has to be remembered in passing upon the precedent that is cited as support for the position that there is no labor protection, or employee protection, is the fact that the doctrine developed at a time when the I.C.C. had discretion to impose or not impose protections for employees in abandonment cases. In 1976, when the 4-R Act was passed, that discretion was taken away, and Congress said that no certificate of abandonment may be issued unless the Commission imposes protection for employees of a certain level of quality. The North Hampton & Bath and the Wellesville case were, of course, decided under that new statute. However, they were not—there were no petitions for reviews in those cases to the Appellate Court to test [20] out the I.C.C.'s stance on that one point, simply because of the limited effect on employees. The issue, as we submit before this Court for the first time in a sense in a judicial review in that way, but again it's not really before the Court, because of 17(a), which says it's mandatory, and in the Milwaukee case, even though the creditors in that case, in the Milwaukee reorganization, had argued that eventually there would be an entire line abandonment. The Court said it doesn't matter, 17(a)—5(a) in that place, which was comparable to 17(a), it's clear on its face and has no exceptions, and it caused deferred payments to take up what would happen later on as a result of whether or not the protection should be continued or should be given priority status.

But, your Honor, the main fact is, we submit, that 17(a) is clear. There is also one other point that should be addressed at this time, and that is Mr. Manos' statement, or in fact the proposed order has the finding that the recent Congressional Act would have no application to this case. Congress on Tuesday, I believe, or Thursday of last week, passed on to the President on Friday an act, the Rock Island Transition Act, which requires protection for

employees, set up a $75 million fund and required that that fund be granted status of an extensive administration and paid immediately.

[21] THE COURT: Where is that fund to come from?

MR. CLARKE: That fund is to come from loan guaranties by the Federal Government, but eventually it becomes an obliagtion of the Estate. In fact, it is an obligation of the Estate.

But the Congress, in a sense, said that this is the way it is to be. It directed the Trustee and the labor organizations to within 10 days agree to a plan which is identical to the Milwaukee Section 9 agreement. If the Trustee and labor do not agree within 10 days, the I.C.C. was to impose it within 20 more days, and that imposition by the I.C.C. was to be in effect. There's no discretion to anybody on this except for the Trustee to decide whether to agree or not. That's it, it's there, and Congress has said it should be in place on any disposition of the Rock Island and the Rock Island Estate. But, that is an elective type of benefit to the employees, and it's up to the employees to determine if they want to take that benefit or the benefits of 17(a), whichever in their mind is considered more beneficial to them.

We would submit, your Honor, that it's a matter of statute, it's a matter of law which we submit under the precedent, and the prior decisions, is not only constitutional, but required to be followed in this case.

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[42] [MR. MURRAY:] We strongly oppose the imposition of any labor protection conditions on the Rock Island Estate. I must say when I heard the representative of the RLEA, the Railway Executives' Association claim the mantle of a creditor, I was somewhat bemused. We had the Missouri Pacific here earlier in these proceedings claiming that particular status, but, as everybody

knows, they have a distinct interest in the situation and it is quite different from the interest of the creditors. It [*sic*] don't propose with respect to labor protection questions to repeat all of the legal arguments contained in the comments we filed with your Honor. I believe we have ample citation of cases contained in those comments supporting our position that there should be no labor protection. I think that the legislative history that is described in those comments is quite clear, that Section 17(a) intended no change in the law with respect to labor protection, and I think the cases that were cited in those comments makes it clear that no change in the law was intended, and in fact, it seems that the Brooks-Scanlon line of cases makes clear that we are [43] entitled, and were entitled some months ago, to cease operations without the imposition of any conditions because of the massive losses that had been incurred by the Rock Island.

In the comments that were submitted to the Court, the Railway Labor Executives' Association has requested the Court to oppose the conditions promulgated in New York dock, which is at 360 I.C.C. 60. Those conditions, I think it's fair to say, would cost the Rock Island Estate hundreds of millions of dollars, and indeed, if those conditions were imposed on the Rock Island Estate, it might well mean that we would all go home and simply turn over the Railroad and its assets to the labor unions, because there would be nothing left for anyone else.

I concede that labor protection, your Honor, has an emotional appeal to all of us, because we all share sympathy for the many workers who have dedicated themselves to the Rock Island over the years and who now find themselves out of a job. But, I think if we review the history of these proceedings very briefly, we will see why labor protection cannot be imposed, not simply as a matter of law, but also on equitable grounds and as a matter of sound economic policy.

The Rock Island filed its petition for [44] reorganization five years ago and the creditors, from the very inception of these proceedings, argued that the Rock Island could not be successfully reorganized. The Trustee made a valiant attempt, but the Estate suffered losses well in excess of $150 million. So really, for a period of four and one-half years, the jobs of Rock Island employees were preserved and protected at the expense of the creditors and shareholders of the Rock Island in an amount well in excess of $150 million.

The Trustee sought to schieve [*sic*] a successful reorganization and really critical to the success of his efforts was an attempt to improve productivity, efficiency at the Rock Island, and that required extensive work rules changes on the part of Rock Island employees. I will concede that there were a few changes that were achieved, but I think everybody would agree that for the most part, those changes were relatively minor and had an insignificant impact on the Rock Island operations. In fact, everytime the Trustee thought to make dramatic productivity improvements, work rules changes that could have made the difference in achieving a successful reorganization of the Rock Island, he was met with resounding rebuffs from the labor organizations representing Rock Island employees. I believe that the successful refusal of railroad labor leaders even to entertain significant work rules changes [45] insured the death of the Rock Island from the first day of these proceedings.

In the summer of 1979, following two devastating winters, the Trustee found himself in a desperate cash position. In fact, that fact was well known to railroad labor leadership, and yet despite the critical cash position of the Trustee on August 28th, 1979, labor leaders called a strike against the Rock Island because the Trustee refused to bow to their demands for retroactive wage increases that were not accompanied concurrently by modest work rules changes and attendant productivity gains. So, on Septem-

ber 20th of that year, the President of the United States appointed an emergency board, pursuant to Section 10 of the Railway Labor Act, thereby mandating a return to work by the employees of the Rock Island. Railway labor leaders defied the Presidential Order and the clear requirements of the Railway Labor Act and they refused to order their members back to work. As a result, the Trustee's cash reserves were completely depleted, and on September 26th, 1979, the Interstate Commerce Commission found the Rock Island cashless, rendering its continued operations impossible, and it ordered directed service. But, even after the entry of a directed service order by the I.C.C., the union leadership refused to order their members back to work until the I.C.C. agreed [46] that all employees of the Rock Island would be called back under the directed service order, even though they might not be needed at the outset. Thus, directed service was much more expensive to the Government than it had to be because of the labor leadership insistence upon employment of all personnel, even though they were not needed.

So, during the ensuing six months of directed service, the jobs of Rock Island employees continued to be protected at a cost to the Government of over $70 million or $80 million. So, since the inception of these reorganization proceedings, the employees of the Rock Island, whose leaders have resisted the productivity gains essential to a successful reorganization, have received five years of job protection, at least five years, at an expense of more than $150 million to the creditors and shareholders of the Rock Island, and an expense of $70 million to the Government and to the taxpayers of this country.

Your Honor, I have said earlier that we have great sympathy for the many loyal and dedicated employees of the Rock Island who are now out of work, and we do. But, we have no sympathy for the leadership to which these workers—the leadership of the unions to which these workers belong, because they did not cooperate in helping to make

these reorganization proceedings [47] successful, and we do not believe as a matter of sound public policy, as well as a matter of law, that they should be rewarded for their intransigeance.

Your Honor, I urge the adoption of the I.C.C.'s recommendations in the format and according to the program that the draft order we have submitted describes, and I specifically urge the rejection of any labor protection conditions.

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THE COURT: Mr. Broadley.

MR. BROADLEY: May it please the Court, I'm John Broadley from the Department of Justice, herein here today [55] for the Department of Transportation.

First, let me say that the Department of Transportation endorses the recommendations of the I.C.C. report, and the only reason that I have a few words to say today other than that is the draft order, the proposed order that was submitted by the Trustee and the creditors. In particular, we have very serious problems with Paragraph 4 of that order, which we believe seriously misreads the constitutional law on the subject. Accordingly, our basic request with respect to this matter is that we be given a few days to file a memorandum setting forth the deficiencies of the proposition espoused in that paragraph.

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[61] [THE COURT:] What we're about today is really a hearing on an earlier made motion to confirm the discontinuation of the railroad operations of the Rock Island. It was continued until today to await the I.C.C. report and recommendations on the subject, which we now have, and I commend the I.C.C. for doing such a fine report in such short time, so give the various creditors an opportunity to express their views, as they have, the various states and other interested private parties

to express their view, which they have. I've heard a lot and I intend to rule on that motion, and I intend these remarks to be my ruling and an explanation of whatever order I ultimately sign, and since I'm in a sense shooting from the hip in a very complicated matter, I apologize if the observations are not as tidy or as well structured as they might otherwise be.

Preliminarily, let me say that I have had many expressions of what might be called the public interest side of this case in the form of letters, telegrams, communications of all kinds. I had a letter from a governor handed to me today, I have another telegram from a governor of another one of the effected states. These are things that no Court ignores, because I am as sensitive to the public interest as I suppose anyone else in the proceeding. I'm sure the creditors would be willing to sign affidavits [62] that they think I have been over zealous in protecting the public interest by letting the Rock Island operate as long as I did. But, the public interest has been my concern for five years and it's my concern now.

On the other hand, this is a bankrupt business, and private creditors cannot forever support the on-going operations at a loss, of a railroad in service of the public interest, and the time when those operations have to cease, because of the rights of the creditors, is a time which has come and a time which has passed.

So, as to the current on-going operations of segments of the Rock Island Railroad, I want to make sure the record is clear that despite the fact that I agree completely with what the Commerce Commission has done by way of directed service, the current operations are not my doing, they are the result of directed service orders or other carriers operating under leases pending negotiation for sale. This is in the public interest. I'm glad that it's happening, but the Rock Island is operating nothing, and it hasn't been operating anything for some considerable time,

because it has been my decision, and continues to be, that the continued operation of the Rock Island has passed that point where it is mandated by the public interest and is such a serious financial disservice to the creditors that it was terminated and had to be terminated.

[63] Now, this affects a lot of people, and the unhappy effect upon the economy, upon labor, upon those private businesses which rely on the sevices of the Rock Island are very, very regrettable. I suppose it's true, as true in any other industry as in the automobile industry today, when an employer reduces operations or ceases operations, there is a serious public impact. But, it's a public impact which, however regrettable, can no longer be the subject of any further concern on the part of the Court. I have tried to explain that my concern has dictated very much many of the orders I've entered in this case over the years, but that public interest can no longer be a dominent factor in consideration of the future of the Rock Island.

Another way of saying it is that the Commerce Commission, which is charged more heavily with the public interest than I, has studied this situation and has, in effect, done whatever could be done for the public interest in the present posture of the Rock Island and has made various recommendations to the Court, which I have received.

We come to the question of the interest of labor. Once again, a most regrettable situation that people lose their jobs because a business stops. But, as to the suggestion that Section 17 of the Milwaukee Restructuring Act mandate labor protection in the Rock [64] Island case, this is a suggestion which I must reject for reasons which I will comment upon in a little greater detail later. I do not read in Section 17 of that Act any applicability to the Rock Island case and the total abandonment, systemwide abandonment of a railroad.

What the new Rock Island lesiglation [*sic*] signed by the President mandates remains to be determined, and I'm not commenting on that now.

Another avenue of very great interest, a form of the public interest, has been expressed by the attorneys from Iowa and Kansas and Texas, and their argument is that I should postpone abandonment of those lines for which bona fide purchase offers have been made, or, to put it another way, I should postpone abandonment of some of those segments of the Railroad for which express consideration has been given by the I.C.C., but which are not included in the Appendix D of the Commerce Commission report.

I have been awaiting bona fide offers for purchases of a variety of segments of this line for many months, and there have been not many forthcoming. I've really come to suspect that other persons who might be interested, other railroads, private business, these states, have not moved too quickly because they have been waiting for abandonment and distressed sale prices. I recognize [65] problems created by the cessation of service in many areas, but I have not seen any rush to come up with the money, the means, the know how to offer to purchase or lease segments of the line and continue their operations, or even to enter into bona fide purchase negotiations. There are some few offers pending that I'm sure are bona fide offers, and I do intend to provide for those in a way that will be made clear as we work out a final form of this order.

Abandonment is really only a technical recognition in this case of what I might have previously ordered and what has actually happened. I assert, despite arguments to the contrary, that I have jurisdiction to order total system abandonment, and I have intended to do so and I intend today to confirm that abandonment based upon that jurisdiction. Section 17 of the Milwaukee Act and its labor protection provisions contemplate less than entire system abandonment in imposing labor protection obligations, and

that section does not apply here. Even if the Milwaukee Restructuring Act and Section 17 of that Act is not legally infirm in other respects, it is not intended to control the situation I face.

The RLEA has made an argument, and I must commend the young man who made it for impressibly arguing his point, that there should be notice and hearing, not [66] emphasis on notice, but emphasis upon hearing, on hearing aspect of giving everybody an opportunity evidentiary-wise to give the Court input into the decision we're making today. Well, in a sense there has been notice, this hearing has been noticed, and anything filed I have considered and I've listened to everybody today, but in a broader sense, as one of the creditors argued, I've been holding hearings on the subject of abandonment of the Rock Island for five years. Five years of arguments, reports, surveys, audits, plans, Commerce Commission recommendations, all with a view towards assisting me in making the ultimate determination as to whether the Rock Island could be reorganized in any viable way or whether the Rock Island must be abandoned, and I've had all the hearings I have to have or need to have on the subject of the need and desirability of an order to discontinue operations.

I have determined, based on all of these hearings, that there's nothing left which can be reorganized into an operating Rock Island Railroad, and that those smaller segments of the total Rock Island System which are susceptible to viable operations are susceptible only to viable operations by some other railroad and not within any structure that we can make of the existing Rock Island System.

[67] The jurisdiction is mine to exempt certain lines from the abandonment order for a short time, and I have been asked to do so and, as I said, pending hearings, the I.C.C. has considered this question and has listened, I am sure, and has read as many of the same arguments as I have heard today and many of the pleadings before me, and the

I.C.C. has twice made its public interest determination, once in determining those lines subject to a directed service order, and secondly, in terms of the content of Schedule D, or Appendix D to their current recommendations.

The I.C.C. are the experts. They are the experts in railroad operations and in the public interest, and I accept their expertise and I accept their recommendations and I intend to follow them. That means that there are many lines in which parties today expressed an interest or many segments of the lines which are subject to an abandonment order. But, the lines are still there, the ties are there, the tracks are there, the right-of-way is there, if anyone wants to buy them and start them up again and pay a reasonable price for them, they will be amazed by the cooperation they will get from the Trustee and from the Court.

It would be my intention to include in any order a provision that there be no scrapping of any segment [68] of the Railroad for the same term that the exemption for the specified segments of the line runs, it has been suggested that it be 180 days, in any area where there is an expression of interest on the part of any bona fide purchaser or any genuine hope or expectation on the part of the Trustee for a sale to a potential operator. So, in other words, it makes common sense that we don't scrap what we hope we can ultimately sell for something higher than scrap value.

So, the motion to confirm the discontinuance of the Rock Island Railroad operations will be granted. The abandonment of the operations is ordered, and by that I mean a total system abandonment. I agree with the exemption of those segments designated by the I.C.C from this order for 180 days, as long as the operations that we are discussing are carried on by other carriers under lease or under a directed service order, so that the financial burden of these operations, if there is one, is not one of the Estate.

I refuse to impose any labor protection conditions under Section 17 of the Milwaukee Restructuring Act, and the

RLEA motion for a stay of this order pending appeal is denied.

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[77] MR. CLARKE: Your Honor, there's one point I'd like to clarify. Your Honor said that the motion by RLEA for a stay is denied. I assume, if I understand correctly, that the motion your Honor was talking about was the motion I filed today dealing with the stay of any further liquidation.

THE COURT: Yes, that's the motion I was referring to.

MR. CLARKE: Your Honor, I'd like to direct your attention to Section 1170(d)(1), which we submit is applicable to this case through 17(a) of the Milwaukee Restructuring Act. 1170(d)(1) of the Bankruptcy Act says, "Enforcement of an order authorizing such abandonment [78] shall be stayed until the time for taking an appeal has expired, or if an appeal is timely taken, until such order has become final."

THE COURT: What is pending on appeal now?

MR. CLARKE: Your Honor, right now the only appeal pending is the appeal by RLEA, at least the appeal of any matters dealing here.

THE COURT: Of what?

MR. CLARKE: Of the liquidation and the refusal to transmit the order of January 25.

THE COURT: This is really a confirmation of the liquidation in a sense, the order of abandonment.

MR. CLARKE: Yes, your Honor, but I might add, your Honor, that RLEA will be filing a notice of appeal from your Honor's order today.

THE COURT: I understand that, and I think that notice of appeal and your first move in the Court of Appeals is to indicate that I've denied the stay and ask them for one, because your motion for a stay today is denied.

MR. CLARKE: Yes, your Honor, but we have not made a motion for a stay of your Honor's order authorizing abandonment, and we would submit that 1170(d)(1)——

THE COURT: Is applicable through 17, which I've said does not apply to total abandonment in this case.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 75 B 2697

In the Matter of:

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY,
Debtor.

In Proceedings for the Reorganization of a Railroad

ORDER NO. 248

This cause coming on as the hearing heretofore set by this Court by its Order No. 232 entered April 14, 1980, upon the Motion filed by William M. Gibbons, the Trustee herein and by the Indenture Trustees and the Henry Crown et al. intervenor interests and upon the direction of the Court to the said Trustee herein to file an application with the Interstate Commerce Commission for its report confirming the abandonment of the Debtor's ("Rock Island") total railroad system, the said application to be filed as described in Section 17 of the Milwaukee Railroad Restructuring Act (MRRA) and Section 1170 of the Bankruptcy Code, and

It appearing to the Court that the Interstate Commerce Commission has filed its report dated May 23, 1980 containing its advisory recommendations as prescribed under Section 17 of the MRRA as aforesaid and recommending total system discontinuance of service and abandonment, subject only to service continuity by other carriers at certain defined points and segments pending possible transfer or sale to such carrier or other entities who may desire to continue such rail service, and

It further appearing to the Court that due notice of the hearing set has been given by the Trustee as prescribed by the Court in its Order No. 232, and the Court and having fully considered the report of the Interstate Commerce Commission, as well as the written comments of various

parties in interest including those of various shippers, federal, state and local agencies and the Railway Labor Executives [*sic*] Association, as well as the legal memoranda submitted by the Trustee and creditors of this estate as well as by the Railway Labor Executives' Associates, and

The Court having found that Rock Island's unconditional discontinuance of service and its total system abandonment is constitutionally mandated and having further found that to force a railroad to continue operations indefinitely at a loss in order that the public may be served is a violation of the Fifth Amendment rights of those who have a security interest in the enterprise. *Brooks-Scanlon Co.* v. *Railroad Commission,* 251 U.S. 396 (1920); and

The Court having further found that labor protective conditions or arrangements are not required of Rock Island's estate pursuant to Section 17 of the MRRA by reason of Rock Island's systemwide termination of operations and total line abandonment which do not warrant further consumption of Rock Island's assets for protection payments to employees whose jobs with Rock Island are no longer in existence by reason of such total abandonment and operational discontinuance. *Montpelier & Barre Railroad Co. Abandonment* (Dkt. No. AB-202 F) _____ I.C.C. _____ (1980); *Northampton & Bath Railroad Co. Abandonment,* 354 I.C.C. 784 (1978); *Wellsville, Addison & Galeton Railroad Corp. Abandonment,* 354 I.C.C. 744 (1978); *Tennessee Central Railway Co. Abandonment,* 333 I.C.C. 443 (1968); *Okmulgee Northern Railway Co. Abandonment,* 320 I.C.C. 637 (1964); *Rutland Railway Corp. Abandonment,* 317 I.C.C 393 (1962), *aff'd sub nom. Brotherhood of Locomotive Engineers* v. *United States,* 217 F. Supp. 98 (N.D. Ohio 1963); *Chicago Attica & Southern Railroad Co. Abandonment,* 261 I.C.C. 646 (1946), and, that consistent with ICC precedent, with the Rock Island's constitutional right to abandon its lines and discontinue its service, and with the equities of the Rock Island situation, no labor protec-

tion arrangements may be imposed on the Rock Island estate; and

The Court being fully advised in the premises,

NOW THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That the total systems abandonment of Rock Island's lines and the discontinuance of all of its rail services and obligations as a common carrier is hereby confirmed and decreed, such abandonment to be consistent, however, with the recommendations of the Interstate Commerce Commission pertaining to the transfer, sale or disposition of track and trackage rights as contained in the report of the Commission dated May 23, 1980; provided, however, that the reasonable period within which the Trustee shall retain the lines designated in Appendix D to the ICC Report shall not exceed 180 days from the date of this Order. That in entering this order, the Court is cognizant that a further order may be required with respect to passenger commuter service pursuant to Section 120 of the Rock Island Transition and Employee Assistance Act.

2. That no claim or arrangement of any kind or nature for employee labor protection payable out of the assets of the Debtor's estate is allowed or required by this Court pursuant to Section 17 of the Milwaukee Railroad Restructuring Act and the Trustee is hereby directed not to pay any such claim or to borrow for such purpose, any and all such claims or arrangements being hereby denied and prohibited by the Court.

Enter
/s/ FRANK J. MCGARR
U.S. District Judge

Dated June 2, 1980

REPORT TO THE PRESIDENT BY EMERGENCY BOARD NO. 191

APPOINTED BY EXECUTIVE ORDER 12159, DATED SEPTEMBER 20, 1979, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED.

To investigate disputes between Chicago, Rock Island and Pacific Railroad Company and certain of their employees represented by the United Transportation Union and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes.

(National Mediation Board Case Nos. A-10287, A-10303, A-10324, A-10313 and A-10314)

WASHINGTON, D.C.
October 22, 1979

Washington, D.C.
October 22, 1979

The President
The White House
Washington, D.C.

Dear Mr. President:

On September 20, 1979, pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order 12159, you created an Emergency Board to investigate disputes between the Chicago, Rock Island and Pacific Railroad Company and certain of its employees represented by the United Transportation Union and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes.

Following its investigation of the issues in dispute, the Board developed recommendations that were accepted as the basis for a settlement of those issues that separated the parties from agreement.

The Board now has the honor to inform you of a settlement of the issues out of which these disputes arose and to submit its Report concerning the recommendations that led to the settlement.

Respectfully submitted,

/s/ James J. Reynolds
James J. Reynolds
Chairman

/s/ Ida Klaus
Ida Klaus
Member

/s/ Nicholas H. Zumas
Nicholas H. Zumas
Member

I. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 191 was created by President Carter on September 20, 1979, by Executive Order No. 12159, pursuant to Section 10 of the Railway Labor Act, as amended (45 U.S.C. 160).

The creation of the Emergency Board was based upon the recommendation of the National Mediation Board (NMB) because of the existence of a strike by the United Transportation Union (UTU) and the Brotherhood of Railway, Airline and Steampship Clerks, Freight Handlers, Express and Station Employes (BRAC) against the Chicago, Rock Island and Pacific Railroad Company (Rock Island), which the NMB found was depriving the Middle West of essential transportation service.

The strike followed a long period of unfruitful negotiations between the parties which commenced in early 1977, mediatory efforts by the NMB, rejection of proffers of arbitration, and rejection of the recommendations of a Special Board of Inquiry by one of the labor organizations.

The President appointed the following members of the Board: James J. Reynolds, former Under Secretary of Labor and retired President of the American Institute of Merchant Shipping, Washington, D.C., chairman; Ida Klaus, member of the New York State Public Employment Relations Board, Attorney and Labor Arbitrator, New York, New York, member; Nicholas H. Zumas, Attorney and Labor Arbitrator, Washington, D.C., member.

II. HISTORY OF THE DISPUTES

The Rock Island is the fourth largest rail carrier of grain in the western region of the United States, operating

over some 7,500 miles of track in 13 midwestern states.[1] Since March 17, 1975, the Rock Island has been in reorganization under Chapter 77 of the Bankruptcy Act under the direction of a trustee appointed by the U.S. District Court for the Northern District of Illinois, Eastern Division.[2] BRAC represents some 1,600 employees on the Rock Island. UTU represents some 2,500 employees on the property. These employees are organized in three branches: UTU(E) representing firemen, UTU(S) representing switchmen, and UTU(T) representing conductors and brakemen.

The BRAC-Rock Island Dispute

On April 1, 1977, pursuant to Section 6 of the Railway Labor Act, BRAC served the Rock Island with a Notice of its desire to revise wages and work rules. On April 28, 1977, an initial conference was held to discuss the revisions sought by BRAC. At this conference, the Carrier informed BRAC that it would not grant the National Railway Labor Conference (NRLC) power of attorney to negotiate wages and work rules on a National basis for the Rock Island. The Rock Island determined to proceed with negotiations separately. The Rock Island did not submit formal Section 6 Notices at that time, but submitted a number of proposed rules changes for informal discussion with BRAC.

During the negotiations in 1977 no agreement was reached. On December 22, 1977, the Rock Island elected to serve formal Section 6 Notices. On January 10, 1978, BRAC served additional Section 6 Notices for concurrent handling. Negotiations on the formal Section 6 Notices began

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[1] Currently, the Rock Island's operations are being conducted by Kansas City Terminal Railway Company under the Directed Service Order of September 26, 1979, issued by the Interstate Commerce Commission.

[2] The Court directed the Trustee on October 10, 1979, to present a plan of reorganization or a plan of liquidation within 60 days.

in January 1978 and continued at various times through August 1978, with no agreement.

On August 8, 1978, BRAC invoked the services of the National Mediation Board (NMB).[3] Mediation sessions were held in January and May of 1979. On June 20, 1979, the NMB proffered arbitration, which was rejected by the Carrier and accepted by BRAC. On August 11 and 17, 1979, the NMB resumed "mediation in the public interest" in Washington, D.C.; however, no agreement was reached. On August 28, 1979, BRAC struck the Rock Island.

The UTU-Rock Island Dispute

On January 3, 1977, the three branches of UTU served Section 6 Notices for changes in wages and work rules. An initial conference was held on these Notices on February 1, 1977, at which time it was agreed to suspend further negotiations until a later date. The Rock Island served its Section 6 Notices on August 29, 1977. Supplemental Section 6 Notices were served by the parties between September 1977 and July 1978.

Negotiations between the Rock Island and each of the three branches of UTU were conducted separately. Bargaining with UTU (E & S) commenced in September 1977, and with UTU(T) in October 1977. The negotiations with the three branches continued at various dates through August 1978, and one joint session was held on March 22, 1978. On June 15, 1978, UTU(T) invoked the services of the NMB.[4] On July 12, 1978, and on August 23, 1978, UTU(S) and UTU(E), respectively, also invoked the services of the NMB.[5] Mediation sessions were held on both a

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[3] The case was docketed as NMB Case No. A-10313. A companion case involving the Peoria Terminal was docketed as NMB Case No. A-10314.

[4] The case was docketed as NMB Case No. A-10324.

[5] These cases were docketed as NMB Case Nos. A-10303 and A-10287, respectively.

separate and joint basis on various dates between September 1978 and March 1979. While these sessions did not produce a settlement, the focus of the dispute was narrowed.

On April 6, 1979, the NMB proffered arbitration to the parties, which was ultimately rejected by both parties. Mediation was resumed on May 21, 1979, and on May 23, 1979, the parties agreed to a mediator's proposal to establish a Special Board of Inquiry to investigate and make recommendations concerning the issue of retroactive pay. The Special Board began hearings on July 26, 1979, and issued its Report and Recommendations on August 27, 1979. Two days later, UTU struck the Rock Island.

Following the strikes by BRAC and UTU, the National Mediation Board held further "mediation sessions in the public interest" on September 11, 1979.

III. ACTIVITIES OF THE EMERGENCY BOARD

The Board convened in Washington, D.C., on October 2, 1979, for on-the-record ex-parte hearings with BRAC and on October 3, 1979, with UTU. Similar on-the-record ex-parte hearings were held with the Rock Island on October 4, 1979, concerning its dispute with BRAC, and on October 5, 1979, concerning its dispute with UTU.

Transcripts and exhibits submitted to the Board were exchanged at the direction of the Board. After a recess to provide time for a careful review of the materials exchanged, the Board commenced a series of off-the-record discussions with the Rock Island on October 11, 1979. A series of off-the-record discussions was commenced with BRAC on October 13, 1979, and with UTU on October 15, 1979. These discussions provided the Board with further views on the issues in dispute, and with reactions to what had been presented by the other side in each of the disputes.

The Board commenced intensive mediation efforts on October 16, 1979. While these efforts were helpful in narrowing the areas of dispute, several key issues remained unresolved. The Board therefore concluded that the best course of action in aiding the parties to reach a final agreement would be to make recommendations and urge their acceptance as a basis for settling all unresolved issues. During the following two days, these recommendations were presented to the parties. On October 18, 1979, they were accepted as a basis for agreement on all unresolved issues.

IV. ISSUES

Out of this long history of unsuccessful negotiations and mediation efforts, there emerged two major issues. On the one hand, the Rock Island, experiencing severe financial difficulties, was determined to obtain substantial relaxation of work rules which it insisted were inhibiting its ability to effectively operate its rail system. On the other hand was an equally determined adherence by the labor organizations to the preservation of the principle of full retroactivity in this industry. Both BRAC and UTU were seeking application of some benefits of their National wage settlements with NRLC, some aspects of which went back to January 1, 1978.

In the case of BRAC-represented employees, the period of retroactivity ended on October 5, 1979, when BRAC returned to work under the ICC Directed Service Order. In the case of UTU-represented employees, the period of retroactivity ended on May 1, 1979, when National wage rates were implemented on the Rock Island pursuant to the May 23, 1979, agreement reached under the auspices of the National Mediation Board.

As early as 1977, the Carrier contended that it could not and would not pay any retroactive wages because of its precarious financial condition, as evidenced by its bank-

ruptcy and the creditors' demand for liquidation of the railroad. It was the Rock Island's position in negotiations that, while retroactive pay was out of the question, it would, upon necessary rules modifications, pay the National wage scale under the following conditions:

A. The full National wage scale would become effective on January 1, 1978, if settlement was reached in 1977.

B. The full National wage scale would become effective on the first day of the calendar month in which negotiations were concluded, for settlements reached on or after January 1, 1978.

The Rock Island recognized in 1977 that certain unions negotiating at the National level might not reach agreement with the NRLC until some time after January 1, 1978, and that the amount due its employees under the first alternative could not be calculated until National settlement. It did not view payment of the increased wages as retroactive because agreements under the first alternative above were reached prior to the effective dates specified in the National Agreement, and the Carrier had the benefit, as of January 1, 1978, of the rule relief sought. Thus, cost savings could begin to provide the resources needed to pay the National rate, and the funds could be realized pending resolution of the National rate. Five unions settled their negotiations with the Rock Island in 1977 under the first alternative.

Seven unions settled with the Rock Island in 1978 or 1979. In each of those instances, the National wage rate became effective on the first day of the calendar month in which agreement was reached. Retroactivity was "waived" in the various agreements for periods ranging from two to twelve months. In no case did the Rock Island agree to pay the higher rate retroactive to January 1, 1978, although the Carrier did agree in these negotiations to do so if

either BRAC or UTU was successful in obtaining retroactivity. Rock Island based its unwillingness to pay retroactive wages on the ground that if it did not obtain any rule relief from these unions during the retroactive period, it would experience no gain in productivity to help offset the higher operating costs that would result. The Carrier asserted that BRAC and UTU could have received the National wage rate at any time had they been willing to reach agreement on certain proposed rules and rules changes sought by the Rock Island.

Finally, the Carrier asserted that it could not pay retroactive wages, even if it desired to do so, because it had no cash, and would not be able to generate sufficient funds in the foreseeable future. Rock Island estimated that the total cost of retroactivity would approximate $14 million.

BRAC rejected the Rock Island's arguments primarily on the ground that retroactive wage adjustments are a traditional and expected part of collective bargaining in the railroad industry. That Union asserted that the Rock Island has a moral, if not legal, obligation to make the full wage pattern of the National Agreement applicable to the Rock Island.

BRAC also viewed the bargaining context between itself and the Carrier as being substantially different from the negotiations involving the unions that had settled with the Rock Island. It contended that those unions were asked to make minor or insignificant rules changes that had little impact on earnings or employment in those crafts or classes. By contrast, the demands made upon its members would, if granted, lead to a significant reduction in the number of BRAC-represented employees. In particular, BRAC pointed to the Rock Island's proposals regarding the Train Order Rule and the Holiday Work Rule. The greater complexity of the negotiations involving BRAC would, under the best of circumstances, have led to prolonged and difficult negotiations. This being so, it was the

Union's position that it was unfair to penalize its members by refusing to consider retroactive wages as an essential part of the final agreement.

The UTU arguments were in many respects similar to those of BRAC. The rules sought by the Rock Island, particularly in the area of Short Haul-Gathering Service, were complex and far more extensive than the rules changes sought from the non-operating unions. The Rock Island-UTU negotiations were further hampered by the need to coordinate the negotiations among the trainmen, enginemen, and switchmen, and by the interrelationship of UTU with other crafts, especially the Brotherhood of Locomotive Engineers.

Moreover, UTU asserted that the Rock Island's failure to grant retroactivity in December 1978, at the time that all other issues had been tentatively resolved, was the major factor in the mounting retroactivity claim.

Ancillary issues existed in both disputes, generally involving the Carrier's need for productivity savings to generate resources to pay for the settlement.

In the case of UTU, the most important productivity issue was the Rock Island's proposed Short Haul and Gathering Service agreement. The Carrier wanted to institute these new services as a means of generating additional business. Institution of these services would permit the Rock Island to compete more successfully with the trucking industry.

Articles X and XI of the UTU National Agreement were also in issue, because Rock Island wanted the benefits of the relief afforded to other railroads under the National Agreement.

In the BRAC dispute, the Rock Island sought to suspend for a time the penalty provisions of the Train Order Rule,

so that operating craft employees could write train orders. The Carrier also wanted to add an exception to the Rule which would make it inapplicable at blind sidings, upon reinstatement of the Rule.

The Rock Island also sought to amend the Holiday Work Rule to eliminate the requirement that every job be filled on a holiday. It also wanted to reduce the entry rates for new employees during the first two years of employment.

BRAC sought to increase per diem and mileage allowances, and to increase the coverage of the Job Stabilization Program by covering employees who entered service on the Rock Island prior to 1972. BRAC also sought to apply the National Agreement on the Rock Island, except to the extent that the parties provided otherwise.

V. THE BOARD'S RECOMMENDATIONS

The Recommendations made by this Emergency Board were predicated on two conditions: (1) That the Rock Island would resume operations as a reorganized viable entity bearing the approval of the ICC and the District Court; and (2) That there would be a relaxation by the labor organizations of certain work rules, and a willingness to accept innovations, both of which would generate additional productivity savings.

These Recommendations set forth below, were accepted by the parties as the basis for settlement.

Emergency Board No. 191 recommends the following settlement of the dispute between the Chicago, Rock Island and Pacific Railroad and the United Transportation Union:

I. Retroactive Pay

A. The Rock Island will pay full retroactivity under the terms of the National Agreement for the period

of January 1, 1978, to April 30, 1979, upon assumption of operations by a successor company under a plan of reorganization approved by the Interstate Commerce Commission and confirmed by the U. S. District Court.

B. Payments will be made in sixteen (16) equal monthly installments, beginning during the first month of operations as outlined in paragraph I.A. above.

II. Wages. COLA. Rules

A. The parties agree to adoption of the May 23, 1979, Memorandum of Agreement and Letters of Understanding covering increased wage rates, COLA, and rule changes affecting the UTU (T), (E), and (S) crafts, effective upon assumption of operations.

B. Articles X and XI of the National Mediation Agreement of August 25, 1978, shall be adopted. National interpretations of these articles shall be applied.

C. The Rock Island will withdraw the Carrier's promulgated rules of August 29, 1979, covering the UTU (T), (E), and (S) crafts.

III. Short Haul—Gathering Service

The parties will adopt the May 23, 1979, Short Haul-Gathering Service Agreement. The UTU General Chairmen will meet with the Rock Island to draft the necessary implementing agreements for the principles contained in the Short Haul-Gathering Service Agreement. The parties will negotiate any additional changes, amendments, or clarifications as may be necessary to assure the success of these new services.

IV. Interchange

The parties agree to negotiate a settlement of the "interchange" dispute.

• • •

Emergency Board No. 191 recommends the following settlement of the dispute between the Chicago, Rock Island and Pacific Railroad and the Brotherhood of Railway and Airline Clerks:

I. Retroactive Pay

A. The Rock Island will pay full retroactivity under the terms of the National Agreement for the period of January 1, 1978, to October 5, 1979, upon assumption of operations by a successor company under a plan of reorganization approved by the Interstate Commerce Commission and confirmed by the U.S. District Court.

B. Payments will be made in sixteen (16) equal monthly installments, beginning in the first month of operations as defined in paragraph I.A. above.

II. Wages

A. The wage and COLA provisions as set forth in the National Agreement between BRAC and the National Railway Labor Conference, bearing an effective date of January 30, 1979, shall be applied to the employees, to become effective upon assumption of operations. In applying this section, wage increases and COLA due after said start-up date will be applied on the dates set forth in the National Agreement.

B. Article VIII—Entry Rates, of the National Agreement, effective January 30, 1979, is hereby modified to provide for entry rates of 85% of the basic rate during a new employee's first year of service and 92% for the second year of service, effective upon assumption of operations.

III. Per Diem & Mileage

All existing rules and agreements dealing with traveling away from assigned headquarters point will be amended to provide:

(A) Lodging expense provided for in Article I, Section A(3) shall be increased from $4.00 per day to $7.00 per day;

(B) Meal allowances provided for in Article I, Sections B(1), B(2) and B(3) shall be increased from $1.00, $2.00, and $3.00 per day respectively to $1.75, $3.50 and $5.25, respectively;

(C) The allowance for the use of an employee's personal automobile provided for in Article I, Section C(2) shall be increased from twelve (12) cents a mile to fifteen (15) cents a mile; and

(D) The maximum reimbursement for meals and lodging costs provided for in Article II, Section B shall be increased from $7.00 per day to $12.25 per day.

IV. Job Stabilization

The applicable Job Stabilization Agreement (February 7, 1967), will be revised and amended to provide:

(A) Employees having an employment relationship with the carrier as of December 31, 1971 shall be placed in protected status;

(B) The protected rates of pay for all employees covered by the revised Agreement shall be the rate of pay of the position occupied on August 1, 1979, or the protected rate in effect, whichever is higher, subject to subsequent increases; and

(C) In instances where employees are drawing furlough allowances, the allowance will be reduced by any compensation the employee receives under

the Railroad Unemployment Insurance Benefits Act, and any compensation received from full time employment in outside industry, obtained following the date of furlough.

(D) Any employee on furlough as of the date of assumption of operations will be covered upon return to service.

(E) A protected employee shall have his protected allowance suspended after five years in furlough status, provided, however, that the full protected status of such employee shall be fully restored upon recall to service.

(F) The parties will negotiate guidelines which will be applied in the consolidation of seniority districts.

V. Work Rules

A. *Train Order Relief.* During the first 24 calendar months immediately following assumption of operations, BRAC agrees to waive the three-hour and eight-hour penalty provisions of Rule 17—Train Orders, provided however, that during said 24 month period, no position handling train orders will be abolished because of or as a result of this waiver.

Prior to the end of the 24 month period, the parties will review the experience under the waiver, with a view to possible extension or modification.

Upon expiration of the 24 calendar month period referred to herein, any work diverted from the craft or class here represented will be returned to coverage by this Agreement, at which time the Rule 17, Paragraph 3(2), will be amended to provide the following exception: "3(2)(d)—That when train orders are relayed from the nearest open train order office on the

seniority district involved to train or engine service employees at blind sidings."

B. *Holiday Work.*—Article 54—Holiday Work, will be amended by addition of the following:

(a) When a holiday falls on a work day of a regularly assigned employee and his (her) position is to be worked, the regular employee is entitled to be used.

(b) When necessary work on two or more positions on the same shift is to be performed by one employee, it will be offered in seniority order to employees occupying the positions involved with the highest rate of pay of the position worked.

(c) When positions to be filled are vacant because of the regular occupant being permitted to lay off, or because there is no regularly assigned incumbent on the holiday, the opportunity to fill the vacant position will be offered to qualified regularly assigned employees on the same shift at the same location whose positions were pulled off or combined with others. If not filled in this manner, the vacancy will be filled in accordance with Article VIII or IX of Rule 13.

C. *Vacations.* The vacation provisions of the National Agreement referred to above will be made effective and applied upon assumption of operations, but in no event earlier than January 1, 1980.

D. The Rock Island will withdraw the Carrier's promulgated rules of August 29, 1979, covering the BRAC-represented employees.

VI. National Agreement

The parties agree that the National Agreement between BRAC and the National Railway Labor Conference signed on January 13, 1979, and effective nationally on January 30, 1979, shall be applied except to the extent set forth above.

Respectfully submitted,

/s/ JAMES J. REYNOLDS
James J. Reynolds
Chairman

/s/ IDA KLAUS
Ida Klaus
Member

/s/ NICHOLAS H. ZUMAS
Nicholas H. Zumas
Member

INTERSTATE COMMERCE COMMISSION

DECISION

Emergency Service Order 1398

KANSAS CITY TERMINAL RAILWAY COMPANY—DIRECTED TO OPERATE OVER—CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY, DEBTOR (WILLIAM M. GIBBONS, TRUSTEE)

SUPPLEMENTAL ORDER NO. 2

Decided: October 3, 1979

On September 26, 1979, the Interstate Commerce Commission, pursuant to 49 U.S.C. § 11125, directed the Kansas City Terminal Railway Company ("DRC") to provide service for traffic originating or terminating on the lines of the Chicago, Rock Island & Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) ("RI").

This supplemental order responds to various questions concerning Interpretation of Emergency Service Order 1398 raised during the course of preparation to implement directed service.

The order is properly interpreted as requiring the DRC to assume the responsibilities for security and maintenance, including the making of lease payments, with respect to all properties of the Rock Island, including locomotives and freight cars, from the date of its entry upon the properties of the Rock Island until it is determined which properties cannot be used in providing directed service. Upon determining that specific properties cannot be used in directed service, the DRC shall simultaneously notify the Commission and the Trustee by hand delivery by providing a listing describing such properties and explaining why they cannot be used in providing directed service. Unless the Commission shall require otherwise, within five working days of its receipt by the Secretary of such a listing, responsibility for the security and maintenance, including

the making of lease payments with respect to all property except locomotives and freight cars, shall revert to the Trustee at the time specified in such notice (not less than five days from the date of filing with the Commission and service upon the Trustee).

More specifically, with respect to property other than locomotives and rolling stock, DRC shall pay the Trustee a sum sufficient to permit the Trustee to make current lease payments on all properties used to provide directed service for the period of directed service less any amounts due to the Trustee from others as rent for their use of properties used to provide directed service. When such property is returned to the custody of the Trustee after a lease payment has been made by the DRC, an adjustment shall be made to reflect the number of days such property was in the custody of DRC. No rent shall be paid to the Trustee for use of any property and facilities owned by the Rock Island other than rolling stock and locomotives.

With respect to rolling stock and locomotives, the DRC shall pay the Trustee a sum sufficient to make current lease payments on all such leased equipment for the period of directed service. As a precondition to this undertaking by the DRC, the Trustee shall agree with the DRC that lease payments attributable to equipment which is determined to be inoperable may be charged back to the Trustee as a claim against the estate or may be offset against payments due to the Trustee for the DRC's use of Rock Island-owned rolling stock and locomotives.

In addition, the DRC is authorized to pay directly to the lessor payments for leased locomotives and freight cars attributable to September 1979, but not paid by the Trustee. We find that the retention of them is essential to the DRC's ability adequately to provide directed service and that it can obtain the use of such equipment only by making such payment. As a precondition to making such payments, the DRC shall obtain an assignment of the lessor's claim

against the estate in favor of the United States and agreement of the Trustee that such amounts may be offset against payments due to the Trustee for the DRC's use of Rock Island-owned rolling stock and equipment. As a further precondition to the making of such payments, the Trustee shall agree to account for revenues earned as a result of operations during the month of September 1979.

The DRC is authorized and required to honor all outstanding agreements with shippers and states providing for repayment of monies advanced for car and track rehabilitation on a use basis covering property used by it to provide directed service during the period of directed service.

The DRC is also authorized and required to make payment to employees under the DSO in accordance with the interpretations set forth in the letter of October 1, 1979 signed by George M. Stafford as acting chairman. We find that use of such employees is required by law and that it would be impossible to obtain their services without making payments as described in that letter.

We find that all of the above expenditures, which the DRC is authorized and/or required to make, arise out of or are attributable to directed service under Emergency Service Order No. 1398 and as such are reimbursable to the DRC under 49 U.S.C. 11125(b)(5).

On page 18 of the Directed Service Order, we required the DRC to explain to the Commission if it could not commence directed service within 7 days of that decision's effectiveness. The DRC has been reporting progress to us on a daily basis and that date is now modified to 12:01 a.m. October 6, 1979. The effective date for commencing operations in ordering paragraph 23 on page 43 is also modified accordingly.

By the Commission, Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham, Clapp, Christian, Trantum, Gaskins, and Alexis. Commissioner Gresham voted to reject the decision and will be submitting a separate expression.

AGATHA L. MERGENOVICH
Secretary

(SEAL)

INTERSTATE COMMERCE COMMISSION

Washington, D.C. 20423
October 1, 1979

Mr. Fred J. Kroll
International President
Brotherhood of Railway &
Airline Clerks
3 Research Place
Rockville, Md. 20850

Mr. V. E. Coe
President & General Manager
Kansas City Terminal
Railway Co.
Union Station
Kansas City, Mo. 64108

Gentlemen:

In order to clarify certain matters regarding the DSO we would like to clear up the following points:

1) On the first day directed service begins pursuant to the ICC DSO, BRAC represented employees shall all be permitted to return to work on the positions they held on August 27, 1979, and such employees will to the greatest extent possible be utilized during the directed service period. With respect to any force reduction thereafter and before any job abolishment notices, the Kansas City Terminal (KCT) must meet with the Brotherhood of Railway and Airline Clerks (BRAC) and representatives of the Department of Transportation (DOT), the National Mediation Board (NMB), Department of Labor (DOL), and Interstate Commerce Commission (ICC) and provide substantial evidence to show the need for such reduction. BRAC shall have the opportunity to rebut such evidence and the decision of DOT, NMB, DOL, and ICC shall be final.

2) All employees employed under the DSO will receive the wages set forth under the BRAC national agreement.

3) The KCT will pay any unpaid wages due for service rendered the Rock Island by employees prior to the DSO as quickly as possible.

4) In view of the fact that the employees not returning to work in September was not the result of any delay on the part of BRAC or the employees in implementing the DSO and restoring service: (1) For the purpose of health and welfare benefits it shall be deemed that all employees performed compensated service for the month of September, 1979; (2) coverage under the agreements in effect concerning Health and Welfare shall continue and remain unbroken for the period of directed service; and (3) KCT shall make payment for Health and Welfare coverage in the same manner as if all employees had rendered compensated service for the month of September, 1979, and KCT shall be responsible for timely providing whatever financial contributions are required to insure all employees are covered for their normal Health and Welfare benefits for the month of October, 1979, and thereafter, during the period of directed service.

5) The KCT will examine the applications for employment of all executive officers employed by the Rock Island with the utmost care.

6) The KCT will apply the rules of the Rock Island contracts with BRAC in effect as of August 27, 1979, and will consider all actions taken by any employees prior to the effective date of the directed service to be matters outside the employment relationship between the KCT and such employees and not subject to any reprisal or other disciplinary action.

Sincerely yours,

/s/ George M. Stafford
George M. Stafford
Acting Chairman

cc: Robert S. Sugarman
James L. Highsaw
J. H. Kenny

General Balance Sheets and Income Statements
1975-1980

WILLIAM M. GIBBONS, TRUSTEE OF CHICAGO,
ROCK ISLAND AND PACIFIC RAILROAD COMPANY, DEBTOR

General Balance Sheet as of December 31, 1975
in Accordance with Regulations of the
Interstate Commerce Commission

ASSETS

CURRENT ASSETS	
701—Cash	$ (1,322,478)
702—Temporary cash investments	22,144,790
703—Special deposits	4,698,433
705—Traffic and car service balances, Dr.	4,445,889
706—Net balance receivable from agents and conductors	9,371,886
707—Miscellaneous accounts receivable	5,855,864
708—Interest and dividends receivable	51,971
709—Accrued accounts receivable	16,447,516
710—Working fund advances	127,950
711—Prepayments	1,452,033
712—Material and supplies	22,588,804
713—Other current assets	487,196
Total Current Assets	$ 86,349,854
SPECIAL FUNDS	
715—Sinking Funds	$ —
716—Capital and other reserve funds	604,689
717—Insurance and other funds	—
Total Special Funds	$ 604,689
INVESTMENTS	
721—Investments in affiliated companies	$ 17,882,630
722—Other investments	1,239
Total Investments	$ 17,883,869
PROPERTIES	
731—Road and equipment property	$502,154,345
732—Improvements on leased property	1,933,927
Total Transportation Property	$504,088,272

733—Accrued depreciation—Improvements on leased property	(509,949)
735—Accrued depreciation—road and equipment	(173,469,923)
736—Amortization of defense projects—road and equipment	(2,379,013)
Total Transportation Property Less Recorded Depreciation and Amortization	$327,729,387
737—Miscellaneous physical property	4,458,510
738—Accrued depreciation—miscellaneous physical property	(1,051,605)
Miscellaneous Physical Property Less Recorded Depreciation	$ 3,406,905
Total Properties Less Recorded Depreciation and Amortization	$331,136,292

OTHER ASSETS AND DEFERRED CHARGES

741—Other assets	$ 2,320,290
742—Unamortized discount on long-term debt	686,923
743—Other deferred charges	2,144,127
Total Other Assets and Deferred Charges	$ 5,151,340
Total Assets	$441,126,044

( ) Denotes credit

Note: In conformity with Order 42 issued by the United States District Court for the Northern District of Illinois—Eastern Division, No. 75B-2697, the following special deposits in trust for the United States were made on the dates shown:

Federal Tax Withholding	$ 826,747.25	December 15, 1975
Federal Retirement Tax	231,305.01	December 15, 1975
Federal Tax Withholding	159,093.70	December 19, 1975
Federal Retirement Tax	46,499.10	December 19, 1975
Federal Tax Withholding	869,911.05	December 31, 1975
Federal Retirement Tax	301,798.65	December 31, 1975
Total:	$2,435,354.76	

WILLIAM M. GIBBONS, TRUSTEE OF CHICAGO,
ROCK ISLAND AND PACIFIC RAILROAD COMPANY, DEBTOR

General Balance Sheet as of December 31, 1975
in Accordance with Regulations of the
Interstate Commerce Commission

LIABILITIES

CURRENT LIABILITIES

752—Traffic and car service balances, Cr. ...	$ 1,240,358
753—Audited accounts and wages payable ..	6,890,638
754—Miscellaneous accounts payable	2,520,201
755—Interest matured unpaid	7,084
756—Dividends matured unpaid	—
757—Unmatured interest accrued	63,883
759—Accrued accounts payable	40,053,931
760—Federal income taxes accrued	—
761—Other taxes accrued	2,645,695
763—Other current liabilities	4,008,098
Total Current Liabilities	$ 57,429,888

LONG-TERM OBLIGATIONS DUE WITHIN ONE YEAR

764—Equipment obligations	$ 1,302,789

LONG-TERM DEBT

765—Funded debt unmatured in hands of public	$ —
766—Eqiupment obligations	3,582,335
768—Debt in default	100,462,028
769—Amounts payable to affiliated companies	1,071,523
Total Long-Term Debt	$105,115,886

RESERVES

771—Pension and welfare reserves	$ 560,000
774—Casualty and other reserves	6,636,366
Total Reserve	$ 7,196,366

OTHER LIABILITIES AND DEFERRED CREDITS	
781—Interest in default	$ 1,847,575
782—Other liabilities (under reorganization proceedings)	70,929,590
782—Other liabilities	13,028,105
784—Other deferred credits	8,724,314
785—Accrued liability—leased property	83,414
Total Other Liabilities and Deferred Credits	$ 94,612,998
SHAREHOLDERS' EQUITY	
791—Capital stock	$146,058,050
798—Retained income—unappropriated	25,586,398
Total Shareholders' Equity	$171,644,448
Total Liabilities and Shareholders' Equity	$437,302,375

Certified Correct:

/s/ VICTOR C. BOHNE
Comptroller

Note: **The company's results of operations are included in Retained Income without adjustment which ultimately may result from company's entry into reorganization under the Bankruptcy Act on March 17, 1975. The obligations classified above as being in default are so classified only because on March 17, 1975, the company filed a petition seeking reorganization under the Bankruptcy Act, which action is defined as an event of default in the instruments under which the obligations were issued.**

March 12, 1976—Audited

WILLIAM M. GIBBONS, TRUSTEE OF CHICAGO,
ROCK ISLAND AND PACIFIC RAILROAD COMPANY, DEBTOR

Income Statement
in Accordance with Regulations of the
Interstate Commerce Commission

December 1975		January 1 to December 31, 1975
	REVENUES	
$26,153,925	Freight	$301,575,426
460,350	Passenger	5,011,487
1,669,121	Other	14,983,997
28,283,396	Railway Operating Revenues	321,570,910
	EXPENSES	
5,031,621	M. of W. & S. Excl. Deprn.	40,644,955
227,534	Depreciation	2,734,492
4,643,049	M. of Equip. Excl. Deprn.	52,902,435
476,376	Depreciation	5,478,716
608,989	Traffic	7,439,032
5,889,941	Transportation	144,886,293
35,552	Dining Car Operations	389,769
1,359,258	General	15,605,184
18,272,320	Railway Operating Expenses	270,080,876
10,011,076	NET REVENUE FROM RAILWAY OPERATIONS	51,490,034
	RAILWAY TAX ACCRUALS (Excl. Income)	
238,349	General	6,111,285
147,940	Railroad Unemployment Insurance	1,885,416
1,622,970	Railroad Retirement	20,383,963
2,009,259	Total	28,380,664
	RENTS—DEBIT BALANCE	
494,139	Equipment—Time & Mileage	7,685,182
582,635	Private Carline Mileage	7,490,946
3,310,884	Other	36,617,262
178,496	Joint Facility	2,433,939
4,566,154	Total Rents	54,227,329

3,435,663	NET RAILWAY OPERATING INCOME	(31,117,959)
367,887	Non-Operating Income	4,549,492
(166,613)	Equity in earnings (losses) of affiliated companies	(655,747)
328,545	Miscellaneous Deductions from Income .	676,880
3,308,392	INCOME AVAILABLE FOR FIXED CHARGES	(27,901,094)
196,018	Fixed Charges	2,331,796
—	Contingent Interest	—
3,112,374	INCOME (LOSS) BEFORE EXTRAORDINARY ITEMS	(30,232,890)
	EXTRAORDINARY ITEMS	
—	Loss on Derailment, Des Moines, Iowa..	(933,016)
$ 3,112,374	NET INCOME (LOSS)	$(31,165,906)

Certified Correct:

/s/ VICTOR C. BOHNE
Comptroller

Notes:

1. The Company's results of operations are included in Retained Income without adjustment which ultimately may result from Company's entry into reorganization under the Bankruptcy Act on March 17, 1975.

2. Revaluation of assets as a result of possible permanent impairment and other adjustments which may be required as a result of examination and audit of the accounts are not reflected in this statement.

WILLIAM M. GIBBONS, TRUSTEE OF CHICAGO,
ROCK ISLAND AND PACIFIC RAILROAD COMPANY, DEBTOR

General Balance Sheet as of December 31, 1978
in Accordance with Regulations of the
Interstate Commerce Commission

ASSETS

CURRENT ASSETS	
701—Cash	$ (396,953)
702—Temporary cash investments	20,016,362
703—Special deposits	1,853,923
705—Traffic and car service balances, Dr.	—
706—Net balance receivable from agents and conductors	9,855,502
707—Miscellaneous accounts receivable	4,974,604
708—Interest and dividends receivable	21,583
709—Accrued accounts receivable	15,246,873
710—Working fund advances	126,826
711—Prepayments	2,149,095
712—Material and supplies	25,632,929
713—Other current assets	541,758
Total Current Assets	$ 80,022,502
SPECIAL FUNDS	
715—Sinking Funds	$ —
716—Capital and other reserve funds	5,345,966
717—Insurance and other funds	—
Total Special Funds	$ 5,345,966
INVESTMENTS	
721—Investments in affiliated companies	$ 16,512,693
722—Other investments	1,239
Total Investments	$ 16,513,932
PROPERTIES	
731—Road and equipment property	$501,014,159
732—Improvements on leased property	1,906,299
Total Transportation Property	$502,920,458

733—Accrued depreciation—improvements on leased property	$ (533,587)
735—Accrued depreciation—road and equipment	(176,586,846)
736—Amortization of defense projects—road and equipment	(2,179,715)
Total Transportation Property Less Recorded Depreciation and Amortization	$323,620,310
737—Miscellaneous physical property	4,449,040
738—Accrued depreciation—miscellaneous physical property	(1,057,619)
Miscellaneous Physical Property Less Recorded Depreciation	$ 3,391,421
Total Properties Less Recorded Depreciation and Amortization	$327,011,731
OTHER ASSETS AND DEFERRED CHARGES	
741—Other assets	$ 8,556,450
742—Unamortized discount on long-term debt	628,880
743—Other deferred charges	5,208,552
Total Other Assets and Deferred Charges	$ 14,393,882
Total Assets	$443,288,013

( ) Denotes credit

Note: In conformity with Order No. 42 issued by the United States District Court for the Northern District of Illinois—Eastern Division, No. 75B-2697, the following special deposits in trust for the United States were made on the dates shown:

Federal Withholding Tax	$1,044,572.81	December 15, 1976
Federal Retirement Tax	294,152.04	December 15, 1976
Federal Withholding Tax	1,042,953.64	December 30, 1976
Federal Retirement Tax	350,176.76	December 30, 1976
	$2,731,855.25	

WILLIAM M. GIBBONS, TRUSTEE OF CHICAGO,
ROCK ISLAND AND PACIFIC RAILROAD COMPANY, DEBTOR

General Balance Sheet as of December 31, 1976
in Accordance with Regulations of the
Interstate Commerce Commission

LIABILITIES

CURRENT LIABILITIES	
752—Traffic and car service balances, Cr.	$ 2,500,553
753—Audited accounts and wages payable	9,896,891
754—Miscellaneous accounts payable	2,954,572
755—Interest matured unpaid	7,950
756—Dividends matured unpaid	—
757—Unmatured interest accrued	274,424
759—Accrued accounts payable	44,651,122
760—Federal income taxes accrued	—
761—Other taxes accrued	5,922,960
763—Other current liabilities	5,409,821
Total Current Liabilities	$ 71,618,293
LONG-TERM OBLIGATIONS DUE WITHIN ONE YEAR	
764—Equipment obligations	$ 1,585,366
LONG-TERM DEBT	
765—Funded debt unmatured in hands of public	$ —
766—Equipment obligations	3,042,076
767—Receivers' and Trustees' Securities	9,393,491
768—Debt in default	100,462,028
769—Amounts payable to affiliated companies	1,084,795
Total Long-Term Debt	$113,982,390
RESERVES	
771—Pension and welfare reserves	$ 680,000
774—Casualty and other reserves	9,061,205
Total Reserves	$ 9,741,205

OTHER LIABILITIES AND DEFERRED CREDITS	
781—Interest in default	$ 4,304,756
782—Other liabilities (under reorganization proceedings)	67,045,992
782—Other liabilities	17,225,093
784—Other deferred credits	11,098,318
785—Accrued liability—leased property	89,539
Total Other Liabilities and Deferred Credits	$ 99,763,698
SHAREHOLDERS' EQUITY	
791—Capital stock	$146,058,050
798—Retained income—unappropriated	539,011
Total Shareholders' Equity	$146,597,061
Total Liabilities and Shareholders' Equity	$443,288,013

Certified Correct:

/s/ VICTOR C. BOHNE
Comptroller

Notes:

1. The Company's results of operations are included in Retained Income without adjustment which ultimately may result from Company's entry into reorganization under the Bankruptcy Act on March 17, 1975. The obligations classified above as being in default are so classified only because on March 17, 1975, the company filed a petition seeking reorganization under the Bankruptcy Act, which action is defined as an event of default in the instruments under which the obligations were issued.

2. Adjustments normally made in year-end closing of accounts, revaluation of assets as a result of possible permanent impairment and other adjustments which may be required as a result of examination and audit of the accounts are not reflected in this statement.

February 11, 1977

WILLIAM M. GIBBONS, TRUSTEE OF CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, DEBTOR

General Balance Sheet as of December 31, 1977

ASSETS

CURRENT ASSETS	
701—Cash	$ (460,775)
702—Temporary cash investment	16,843,455
703—Special deposits	1,863,340
705—Traffic and car service balances, Dr.	—
706—Net balance receivable from agents and conductors	11,076,106
707—Miscellaneous accounts receivable	8,716,386
708—Interest and dividends receivable	22,534
709—Accrued accounts receivable	15,971,155
710—Working fund advances	126,726
711—Prepayments	2,020,216
712—Material and supplies	13,482,718
713—Other current assets	543,566
Total Current Assets	$ 70,205,427
SPECIAL FUNDS	
715—Sinking Funds	$ —
716—Capital and other reserve funds	8,246,805
717—Insurance and other funds	—
Total Special Funds	$ 8,246,805
INVESTMENTS	
721—Investments in affiliated companies	$ 15,587,092
722—Other investments	1,154
Total Investments	$ 15,588,246
PROPERTIES	
731—Road and equipment property	$708,618,034
732—Improvements on leased property	3,683,026
Total Transportation Property	$712,301,060

733—Accrued deprn.—improvements on leased property	$ (2,189,522)
735—Accrued deprn.—road and equipment	(351,248,018)
736—Amortization of defense projects—road and equipment	(1,878,431)
Total Transportation Property Less Recorded Depreciation and Amortization	$356,985,089
737—Miscellaneous physical property	4,489,952
738—Accrued depreciation—misc. physical property	(1,109,610)
Miscellaneous Physical Property Less Recorded Deprn.	$ 3,380,342
Total Properties Less Recorded Deprn. and Amort.	$360,365,431
OTHER ASSETS AND DEFERRED CHARGES	
741—Other assets	$ 5,006,196
742—Unamortized discount on long-term debt	—
743—Other deferred charges	5,219,742
Total Other Assets and Deferred Charges	$ 10,225,938
Total Assets	$464,631,847

( ) Denotes credit

Note: In conformity with Order No. 42 issued by the United States District Court for the northern district [*sic*] of Illinois—Eastern Division, No. 75B-2697, the following special deposits in trust for the United States were made on the dates shown:

Federal Withholding Tax	$1,047,430.82	December 13, 1977
Federal Retirement Tax	287,023.89	December 13, 1977
Federal Withholding Tax	1,056,224.43	December 28, 1977
Federal Retirement Tax	348,653.00	December 28, 1977
	$2,739,332.14	

WILLIAM M. GIBBONS, TRUSTEE OF CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, DEBTOR

General Balance Sheet as of December 31, 1977

LIABILITIES

CURRENT LIABILITIES	
752—Traffic and car service balances, Cr. ..	$ 5,141,244
753—Audited accounts and wages payable .	6,508,450
754—Miscellaneous accounts payable	8,133,242
755—Interest matured unpaid	7,668
756—Dividends matured unpaid	—
757—Unmatured interest accrued	633,568
759—Accrued accounts payable	43,355,158
760—Federal income taxes accrued	—
761—Other taxes accrued	5,744,572
763—Other current liabilities	8,766,411
Total Current Liabilities	$ 78,290,313
LONG-TERM OBLIGATIONS DUE WITHIN ONE YEAR	
764—Equipment obligations	$ 1,608,409
LONG-TERM DEBT	
765—Funded debt unmatured in hands of public	$ —
766—Equipment obligations	1,824,612
767—Receivers' and Trustees' Securities ..	16,938,917
768—Debt in default	100,462,028
769—Amounts payable to affiliated companies	1,234,784
770.1—Unamortized discount on long term debt	(571,683)
Total Long-Term Debt	$119,938,658
RESERVES	
771—Pension and welfare reserves	$ 712,959
774—Casualty and other reserves	11,152,192
Total Reserves	$ 11,865,151

OTHER LIABILITIES AND DEFERRED CREDITS	
781—Interest in default	$ 6,462,093
782—Other Liabilities	15,137,660
782—Other Liabilities (under reorganization proceedings)	
Incurred prior to reorganization	57,776,363
Incurred subsequent to reorganization	10,057,484
784—Other deferred credits	12,414,844
785—Accrued Liability—leased property	93,164
Total Other Liabilities and Deferred Credits	$101,941,608
SHAREHOLDER'S EQUITY	
791—Capital stock	$146,058,050
798—Retained income—unappropriated	4,929,658
Total Shareholders' Equity	$150,987,708
Total Liabilities and Shareholders' Equity	$464,631,347

Certified Correct:

/s/ VICTOR C. BOHNE
Comptroller

Note: The Company's results of operations are included in Retained Income without adjustment which ultimately may result from Company's entry into reorganization under the Bankruptcy Act on March 17, 1975. The obligation classified above as being in default are [*sic*] so classified only because on March 17, 1975, the company filed a petition seeking reorganization under the Bankruptcy Act, which action is defined as an event of default in the instruments under which the obligations were issued.

WILLIAM M. GIBBONS, TRUSTEE OF CHICAGO,
ROCK ISLAND AND PACIFIC RAILROAD COMPANY, DEBTOR

INCOME STATEMENT

	TWELVE MONTHS ENDED DEC. 31, 1977	DEC. 31, 1976
REVENUES		
Freight	$337,037,478	$317,750,925
Passenger	4,681,118	4,761,832
Other	21,252,621	18,807,301
Railway Operating Revenues	362,971,217	341,320,058
EXPENSES		
M. of W. & S. Excl. Depreciation	37,611,020	29,837,662
Depreciation	13,434,409	12,692,589
M. of Equip. Excl. Depreciation	56,667,790	50,557,050
Depreciation	5,161,576	5,199,795
Traffic	7,458,975	7,279,877
Transportation	159,121,710	148,596,733
Dining Car Operations	196,325	212,176
General	16,259,648	15,550,097
Railway Operating Expenses	295,961,453	[sic]270,125,979
NET REVENUE FROM RAILWAY OPERATIONS	67,009,764	71,194,079
RAILWAY TAX ACCRUALS (Excl. Income)		
General	3,701,675	5,643,872
Railroad Unemployment Insurance	3,349,798	2,331,404
Railroad Retirement	21,468,074	20,491,867
Total	28,519,547	28,467,143
RENTS—DEBIT BALANCE		
Equipment—Time and Mileage	8,322,094	8,321,999
Private Carline Mileage	8,749,588	7,415,624
Other	43,813,617	38,595,518
Joint Facility	1,327,811	2,486,283
Total Rents	62,213,110	56,819,424
NET RAILWAY OPERATING INCOME	(23,722,893)	(14,092,488)
Non-Operating Income	8,900,040	4,279,023

Equity in Earnings (Losses) of Affiliated Companies	(1,194,837)	(40,775)
Miscellaneous Deductions from Income	754,610	1,670,041
INCOME AVAILABLE FOR FIXED CHARGES	(16,772,300)	(11,524,276)
Fixed Charges	3,320,307	2,499,998
Contingent Interest		
NET INCOME (LOSS) Before Extraordinary Items	(20,898,107)	(14,024,274)
Cumulative effect on pr. yrs. (thru 12/31/75) of change in method of acctg. for trk. struc.		13,460,641
NET INCOME (LOSS)	$(20,093,107)	$ (563,633)

Certified Correct:

/s/ VICTOR C. BOHNE
Comptroller

Note: The Company's results of operations are included in Retained Income without adjustment which ultimately may result from Company's entry into reorganization under the Bankruptcy Act on March 17, 1975.

February 21, 1978

WILLIAM M. GIBBONS, TRUSTEE OF CHICAGO,
ROCK ISLAND AND PACIFIC RAILROAD COMPANY, DEBTOR

General Balance Sheet as of December 31, 1978

ASSETS

CURRENT ASSETS		
701—Cash		$ (4,617,086)
702—Temporary cash investments		21,102,305
703—Special deposits		2,154,321
705—Accounts Receivable; interline and other balances		—
706—Accounts Receivable; customers		14,873,402
707—Accounts Receivable; other		7,689,634
708—Interest and dividends receivable		32,161
708.5—Receivables from affiliated companies		247,834
709—Accrued accounts receivable		21,768,433
709.5—Allowance for uncollectible accounts		(125,000)
710—Working fund advances		129,346
711—Prepayments	$2,580,041	
Capitalized Equip leases; non-recourse	338,000	2,918,041
712—Material and supplies		16,238,531
713—Other current assets		485,401
Total Current Assets		$ 82,897,323
SPECIAL FUNDS		
715—Sinking Funds		$ —
716—Capital Funds		9,169,767
717—Insurance and other funds		—
Total Special Funds		$ 9,169,767
INVESTMENTS		
721—Investments and advances; Affiliated companies		$ 15,926,390

721.5—Adj; other investments and advances Affiliated Co's		(695,956)
722—Other investments and advances		1,154
Total Investments and Advances		$ 15,231,588
PROPERTIES		
731—Road and equipment property	$714,305,260	$ —
Capital equipment leases; non-recourse	121,523,000	$ 835,828,260
732—Improvements on leased property		3,683,026
Total Transportation Property		$ 839,511,286
733—Accumulated depreciation—imprvmt on leased prpty		$ (2,313,144)
735—Accumulated depreciation; Road and equipment	$(357,735,894)	—
Capitalized equipment leases; non-recourse	(43,370,000)	$(401,105,894)
736—Amortization of defense projects—road and equipment		(1,855,121)
Total Transportation Property Less Recorded Depreciation and Amortization		$ 434,237,127
737—Property used in other than carrier operations		4,477,271
738—Accumltd deprn; prpty used in other than carrier oprns.		(1,135,526)
Prpty used in other than carrier oprns less Recorded Depreciation		$ 3,341,745
Total Properties Less Recorded Depreciation and Amortization		$ 437,578,872
OTHER ASSETS AND DEFERRED CHARGES		
739—Organization Expenses		$ —
741—Other assets		8,233,008
743—Other deferred charges		5,348,180

Total Other Assets and Deferred Charges	$ 13,581,188
Total Assets	$ 558,458,738

( ) Denotes credit

Note: 1. In conformity with Order No. 42 issued by the United States District Court for the Northern District of Illinois—Eastern Division, No. 75B-2697, the following special deposits in trust for the United States were made on the dates shown:

Federal Withholding Tax	$1,353,678.82	December 13, 1978
Federal Retirement Tax	330,411.27	December 13, 1978
Federal Withholding Tax	1,246,193.49	December 28, 1978
Federal Retirement Tax	414,609.15	December 28, 1978
	$3,344,892.73	

WILLIAM M. GIBBONS, TRUSTEE OF CHICAGO,
ROCK ISLAND AND PACIFIC RAILROAD COMPANY, DEBTOR

Income Statement in Accordance with Regulations of the Interstate Commerce Commission

	DECEMBER 1976			
	Operations Exclusive of Rehabilitation Programs	Rehabilitation Programs	Total	1975
REVENUES				
Freight	$26,334,218	$ —	$26,334,218	$26,153,925
Passenger	376,687	—	376,687	460,350
Other	1,792,141	—	1,792,141	1,669,121
Railway Operating Revenues	28,503,046	—	28,503,046	28,283,396
EXPENSES				
M. of W. & S. Excl. Depreciation	4,106,986	1,852,108	5,959,094	5,031,621
Depreciation	230,455	—	230,455	227,534
M. of Equip. Excl. Depreciation	5,136,166	297,111	5,433,277	4,643,049
Depreciation	426,879	—	426,879	476,376
Traffic	598,338	—	598,338	608,989
Transportation	13,014,186	—	13,014,186	5,889,941
Dining Car Operations	32,165	—	32,165	35,552

Income Statement (continued)

	December 1976			
	Operations Exclusive of Rehabilitation Programs	Rehabilitation Programs	Total	1975
General	1,148,695	—	1,148,695	1,359,258
Railway Operating Expenses	24,693,870	2,149,219	26,843,089	18,272,320
NET REVENUE FROM RAILWAY OPERATIONS	3,809,176	(2,149,219)	1,659,957	10,011,076
RAILWAY TAX ACCRUALS (Excl. Income)				
General	80,581	—	80,581	238,349
Railroad Unemployment Insurance	182,556	20,656	203,212	147,940
Railroad Retirement	1,775,426	200,976	1,976,402	1,622,970
Total	2,038,563	221,632	2,260,195	2,009,259
RENTS—DEBIT BALANCE				
Equipment—Time and Mileage	689,764	—	689,764	494,139
Private Carline Mileage	711,011	—	711,011	582,635
Other	3,478,992	—	3,478,992	3,310,884
Joint Facility	199,860	—	199,860	178,496
Total Rents	5,079,627	—	5,079,627	4,566,154

NET RAILWAY OPERATING INCOME	(3,309,014)	(2,370,851)	(5,679,865)	3,435,663
Non-Operating Income	791,400	—	791,400	367,887
Equity in Earnings (Losses) of Affiliated Companies	126,253	—	126,253	(166,613)
Miscellaneous Deductions from Income	155,854	—	155,854	328,545
INCOME AVAILABLE FOR FIXED CHARGES	(2,547,215)	(2,370,851)	(4,918,066)	3,308,392
Fixed Charges	268,852	—	268,852	196,018
Contingent Interest	—	—	—	—
NET INCOME (LOSS)	$(2,816,067)	$(2,370,851)	$(5,186,918)	$ 3,112,374

Certified Correct:

/s/ VICTOR C. BOHNE
Comptroller

Notes:

1. The Company's results of operations are included in Retained Income without adjustment which ultimately may result from Company's entry into reorganization under the Bankruptcy Act on March 17, 1975.

2. Revaluation of assets as a result of possible permanent impairment and other adjustments which may be required as a result of examination and audit of the accounts are not reflected in this statement.

WILLIAM M. GIBBONS, TRUSTEE OF CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, DEBTOR

General Balance Sheet as of December 31, 1978

LIABILITIES

CURRENT LIABILITIES		
752—Accounts payable; interline and other balances		$ 4,425,074
753—Audited accounts and wages payable		9,375,478
754—Accounts payable; other		7,305,919
755—Interest and dividends payable	$ 777,552	
Capitalized equipment leases; non-recourse	1,351,000	$ 2,128,552
756—Dividends payable		—
757—Payables to affiliated companies		—
759—Accrued accounts payable		54,309,401
760—Federal income taxes accrued		—
761.5—Other taxes accrued		7,564,820
763—Other current liabilities		16,295,429
Total Current Liabilities		$101,404,673
LONG-TERM OBLIGATIONS DUE WITHIN ONE YEAR		
764—Equipment obligations	$1,088,981	
Capitalized equipment leases; non-recourse	6,575,000	$ 7,663,981
LONG-TERM DEBT		
765—Funded debt unmatured		$ —
766—Equipment obligations		1,287,919
766.5—Capitalized lease obligations		83,529,000
767—Receivers' and Trustees' Securities		21,091,993
768—Debt in default		100,462,028
769—Accounts payable; affiliated companies		1,313,180
770.1—Unamortized debt discount		—
Total Long-Term Debt		$207,684,120
RESERVES		
771—Accrued liability; pension and welfare		$ 809,245
772—Accrued liability; leased property		96,755

774—Accrued liability; casualty and other claims ..	12,087,620
Total Reserves	$ 12,993,620
OTHER LIABILITIES AND DEFERRED CREDITS	
781—Interest in default	$ 16,900,926
782—Other Liabilities	8,433,993
782—Other Liabilities (under reorganization proceedings)	
Incurred prior to reorganization	56,111,035
Incurred subsequent to reorganization	11,838,050
784—Other deferred credits	11,339,635
Total Other Liabilities and Deferred Credits	$104,623,639
SHAREHOLDERS' EQUITY	
791—Capital stock	$146,058,050
798—Retained income—unappropriated	(21,969,345)
Total Shareholders' Equity	$124,088,705
Total Liabilities and Shareholders' Equity	$558,458,738

Certified Correct:

/s/ Victor C. Bohne
Comptroller

Note: 1. The Company's results of operations are included in Retained Income without adjustment which ultimately may result from Company's entry into reorganization under the Bankruptcy Act on March 17, 1975. The obligation classified above as being in default are [*sic*] so classified only because on March 17, 1975, the company filed a petition seeking reorganization under the Bankruptcy Act, which action is defined as an event of default in the instruments under which the obligations were issued.

WILLIAM M. GIBBONS, TRUSTEE OF CHICAGO,
ROCK ISLAND AND PACIFIC RAILROAD COMPANY, DEBTOR
UNAUDITED

Preliminary General Balance Sheet as of December 31, 1979

ASSETS

CURRENT ASSETS		
701—Cash		$ (2,384,230)
702—Temporary cash investments		14,120,000
703—Special deposits		299,533
705—Accounts Receivable; interline and other balances		—
706—Accounts Receivable; customers		—
707—Accounts Receivable; other		7,722,847
708—Interest and dividends receivable		10,660
708.5—Receivables from affiliated companies		620,664
709—Accrued accounts receivable		80,208,879
709.5—Allowance for uncollectible accounts		(125,000)
710—Working fund advances		129,346
711—Prepayments	$111,026	
Capitalized Equip leases	—	111,026
712—Material and supplies		—
713—Other current assets		—
Total Current Assets		$ 100,713,725
SPECIAL FUNDS		
715—Sinking Funds		$ —
716—Capital Funds		10,849,481
717—Insurance and other funds		—
Total Special Funds		$ 10,849,481
INVESTMENTS		
721—Investments and advances; Affiliated companies		$ 15,993,350
721.5—Adj; other investments and advances Affiliated Co's		(968,215)
722—Other investments and advances		1,154
Total Investments and Advances		$ 15,026,289

PROPERTIES		
731—Road and equipment property	$721,271,141	$ —
Capitalized equipment leases	121,227,000	842,498,141
732—Improvements on leased property		3,682,413
Total Transportation Property		$ 846,180,554
733—Accumulated depreciation—imprvmt on leased prpty		$ (2,436,767)
735—Accumulated depreciation; Road and equipment	$(371,332,304)	
Capitalized equipment leases	(51,273,000	$(422,605,304)
736—Amortization of defense projects—road and equipment		(1,855,066)
Total Transportation Property Less Recorded Depreciation and Amortization		$ 419,283,417
737—Property used in other than carrier operations		4,479,249
738—Accumltd deprn; propty used in other than carrier oprns		(1,187,620)
Prpty used in other than carrier oprns less Recorded Depreciation		$ 3,291,629
Total Properties Less Recorded Depreciation and Amortization		$ 422,575,046
OTHER ASSETS AND DEFERRED CHARGES		
739—Organization Expenses		$ —
741—Other assets	$6,953,092	
Capitalized equipment leases	1,388,000	8,341,092
743—Other deferred charges		7,504,000
Total Other Assets and Deferred Charges		$ 15,845,092
Total Assets		$ 565,009,633

( ) Denotes credit

WILLIAM M. GIBBONS, TRUSTEE OF CHICAGO,
ROCK ISLAND AND PACIFIC RAILROAD COMPANY, DEBTOR
UNAUDITED

Preliminary General Balance Sheet as of December 31, 1979

LIABILITIES

CURRENT LIABILITIES		
752—Accounts payable; interline and other balances		$ 14,155,168
753—Audited Accounts and wages payable		1,654,062
754—Accounts payable; other		30,064,726
755—Interest and dividends payable	$2,092,047	
Capitalized equipment leases	1,250,000	3,342,047
756—Dividends payable		—
757—Payables to affiliated companies		—
759—Accrued accounts payable		66,705,563
760—Federal income taxes accrued		—
761.5—Other taxes accrued		2,253,654
763—Other current liabilities		2,214,560
Total Current Liabilities		$120,389,780
LONG-TERM OBLIGATIONS DUE WITHIN ONE YEAR		
764—Equipment obligations	$ 948,904	
Capitalized equipment leases	7,132,000	
Other Obligations	3,484,000	11,564,904
LONG-TERM DEBT		
765—Funded debt unmatured		$ —
766—Equipment obligations		1,107,165
766.5—Capitalized lease obligations		76,191,000
767—Receivers' and Trustees' Securities		35,865,992
768—Debt in default		100,462,028
769—Accounts payable; affiliated companies		1,210,416
Total Long-Term Debt		$214,836,601
RESERVES		
771—Accrued liability; pension and welfare		$ 929,245
772—Accrued liability; leased property		100,346
774—Accrued liability; casualty and other claims		12,730,516
Total Reserves		$ 13,760,107

OTHER LIABILITIES AND DEFERRED CREDITS	
781—Interest in default	$ 18,864,663
782—Other liabilities	16,730,904
782—Other liabilities (under reorganization proceedings)	
Incurred prior to reorganization	56,935,217
Incurred subsequent to reorganization	14,342,351
784—Other deferred credits	47,139,636
Total Other Liabilities and Deferred Credits	$154,012,771
SHAREHOLDERS' EQUITY	
791—Capital stock	$146,058,050
798—Retained income—unappropriated	(95,612,580)
Total Shareholders' Equity	$ 50,445,470
Total Liabilities and Shareholders' Equity	$565,009,633

Certified Correct:

/s/ VICTOR C. BOHNE
Comptroller

Notes: 1. The Company's results of operations are included in Retained Income without adjustment which ultimately may result from Company's entry into reorganization under the Bankruptcy Act on March 17, 1975. The obligation classified above as being in default are [*sic*] so classified only because on March 17, 1975, the company filed a petition seeking reorganization under the Bankruptcy Act, which action is defined as an event of default in the instruments under which the obligations were issued.

2. Adjustments normally made in year-end closing of accounts, revaluation of assets as a result of possible permanent impairment and other adjustments which may be required as a result of examination and audit of the accounts are not reflected in this statement.

3. The above statement was prepared without benefit of an agreement between the Trustee of the Chicago, Rock Island and Pacific Railroad Company and the Kansas City Terminal Company, Directed Rail Carrier for use of Trustee's property and/or costs of services rendered by the Directed Rail Carrier for the Trustee. Such items were included on an estimated basis and may be subsequently adjusted.

WILLIAM M. GIBBONS, TRUSTEE OF CHICAGO,
ROCK ISLAND AND PACIFIC RAILROAD COMPANY, DEBTOR

PRELIMINARY INCOME STATEMENT

UNAUDITED

	DECEMBER, 1979	DECEMBER, 1978
REVENUES		
Freight	$ 3,320,721	$27,326,020
Passenger	(340)	430,900
Other	595,477	2,007,748
Railway Operating Revenues	4,115,858	29,764,668
EXPENSES		
Way & Structures Excl. Depreciation	96,153	3,015,237
Way & Structures Depreciation	1,190,595	1,172,440
Equipment Excl. Depreciation	468,699	9,498,689
Equipment Depreciation	1,259,997	1,150,311
Transportation	1,212,719	16,523,330
General & Administrative	782,023	2,020,966
Railway Operating Expenses	5,010,186	33,380,973
NET REVENUES FROM RAILWAY OPERATIONS	(894,328)	(3,616,305)
Other Income	919,157	1,789,347
Equity in Earnings (Losses) of Affiltd. Co.	(82,158)	300,599
Miscellaneous Deductions from Income	684,005	325,114
INCOME AVAILABLE FOR FIXED CHARGES	(741,334)	(1,851,473)
Fixed Charges	1,483,129	1,365,145
Contingent Interest	—	—
NET INCOME (LOSS)	$(2,224,463)	$(3,216,618)

Certified Correct:

/s/ VICTOR C. BOHNE
Comptroller

Notes: 1. The Company's results of operations are included in Retained Income without adjustment which ultimately may result from Company's entry into reorganization under the Bankruptcy Act on March 17, 1975.

2. Adjustments normally made in year-end closing of accounts, revaluation of assets as a result of possible permanent impairment and other adjustments which may be required as a result of examination and audit of the accounts are not reflected in this statement.

3. In conformity with I.C.C. Order #36604 dated October 12, 1977, certain leased equipment acquired has been capitalized. The effect of this requirement results in adjustments increasing net loss for December, 1979 by $389,000 and increasing net loss for December, 1978 by $270,000.

4. Equipment expenses include programmed repairs made with funds borrowed under contract with the FRA and repairs made under shipper sponsorship loans. FRA repairs made after October 4, 1979 have been paid by the Kansas City Terminal Co. (D.R.C.) and accrued by the Trustee as an expense. FRA repairs in December, 1979 were $628,000 and $303,000 in the same month of 1978. No shipper sponsorship repairs were made in December, 1979 and $563,000 in December, 1978.

5. The above statement was prepared without benefit of an agreement between the Trustee of the Chicago, Rock Island and Pacific Railroad Company and the Kansas City Terminal Company, Directed Rail Carrier for use of Trustee's property and/or cases of services rendered by the Directed Rail Carrier for the Trustee. Such items were included on an estimated basis and may be subsequently adjusted.

March 31, 1980

WILLIAM M. GIBBONS, TRUSTEE OF CHICAGO,
ROCK ISLAND AND PACIFIC RAILROAD COMPANY, DEBTOR

General Balance Sheet as of December 31, 1980

UNAUDITED

ASSETS

CURRENT ASSETS	
Cash and temporary cash investments	$ 9,377,676
Accounts receivable	68,086,700
Inventories	5,755,264
Other	862,024
Total Current Assets	$ 84,081,664
INVESTMENTS AND RESTRICTED FUNDS	$ 98,751,006
PROPERTIES (Less Accumulated Depreciation)	$270,803,803
Other Assets and Deferred Charges	$ 7,481,377
Total Assets	$461,117,850

LIABILITIES

CURRENT LIABILITIES	
Accounts payable	$195,111,366
Taxes, Other Than Federal Income Tax	2,404,608
Long Term Debt, Due Within One Year	736,967
Total Current Liabilities	$198,252,941
LONG TERM DEBT	
Equipment	$ 397,540
Trustee Certificates	41,426,587
Total Long Term Debt	$ 41,824,127
PENSION, CASUALTIES AND OTHER LIABILITIES	$ 52,682,992
LIABILITIES, DEFERRED UNDER REORGANIZATION	
Debt in Default	$100,462,028
Interest in Default	20,825,349

Liabilities Incurred Prior to Reorganization	55,282,635
Liabilities Incurred Subsequent to Reorganization	17,438,890
Total Liabilities Deferred	$194,008,902
SHAREHOLDERS' EQUITY	$(25,651,112)
Total Liabilities and Shareholders' Equity	$461,117,850

Certified Correct:

/s/ VICTOR C. BOHNE
Comptroller

Notes: 1. The Company's results of operations are included in Retained Income without adjustment which ultimately may result from Company's entry into reorganization under the Bankruptcy Act on March 17, 1975. The obligation classified above as being in default are [*sic*] so classified only because March 17, 1975, the Company filed a petition seeking reon March 17, 1975, the Company filed a petition seeking reorganization under the Bankruptcy Act, which action is defined as an event of default in the instruments under which the obligations were adjusted.

2. Revaluation of assets which may occur as a result of the liquidation procedure and other adjustments which may be required as a result of examination and audit of the accounts are not reflected in this statement.

3. The above statement was prepared without benefit of an agreement between the Trustee of the Chicago, Rock Island and Pacific Railroad Company and the Kansas City Terminal Railway Company, Directed Rail Carrier for use of Trustee's property and/or costs of services rendered by the Directed Rail Carrier for the Trustee. Such items were included on an estimated basis and may be subsequently adjusted.

March 11, 1981

WILLIAM M. GIBBONS, TRUSTEE OF CHICAGO,
ROCK ISLAND AND PACIFIC RAILROAD COMPANY, DEBTOR

INCOME STATEMENT

UNAUDITED

	TWELVE MONTHS ENDED Dec. 31, 1980	Dec. 31, 1979
REVENUES		
Freight	$ (696)	$241,920,450
Passenger	589	3,808,450
Other	195,240	16,747,847
Railway Operating Revenues	195,133	262,476,747
EXPENSES		
Way & Structures Excl. Depreciation	1,333,191	29,007,312
Way & Structures Depreciation	13,710,304	14,179,919
Equipment Excl. Depreciation	4,543,348	113,718,708
Equipment Depreciation	11,393,563	14,133,550
Transportation	2,898,299	143,473,622
General & Administrative	15,564,033	27,020,489
Railway Operating Expenses	49,442,738	341,533,600
NET REVENUE FROM RAILWAY OPERATIONS	(49,247,605)	(79,056,853)
Other Income	21,077,686	6,704,883
Equity in Earnings (Losses) of Affiliated Companies	63,077	(273,765)
Miscellaneous Deductions from Income	414,367	4,354,490
INCOME AVAILABLE FOR FIXED CHARGES	(28,521,209)	(76,980,225)
Fixed Charges	14,621,992	16,879,871
Contingent Interest	—	—
NET INCOME (LOSS)	(43,143,201)	(93,860,096)
Effect of Adjustments for Items Applicable to 1979	(2,146,521)	
NET INCOME (LOSS) AFTER ADJUSTMENTS	$(45,289,722)	

Certified Correct:

/s/ VICTOR C. BOHNE
Comptroller

WILLIAM M. GIBBONS, TRUSTEE OF CHICAGO,
ROCK ISLAND AND PACIFIC RAILROAD COMPANY, DEBTOR

INCOME STATEMENT

	December 1978	Year 1978	Restated* 1977
REVENUES			
Freight	$27,326,020	$365,749,170	$337,037,478
Passenger	430,900	5,041,932	4,681,118
Other	2,007,748	20,824,396	21,252,621
Railway Operating Revenues	29,764,668	391,615,498	362,971,217
EXPENSES			
Way & Structures Excl. Depreciation	3,015,237	42,747,666	42,400,924
Way & Structures Excl. Depreciation	1,172,440	13,882,545	13,484,409
Equipment Excluding Depreciation	9,498,689	112,647,978	105,820,324
Equipment Excluding Depreciation	1,150,311	13,794,978	13,724,576
Transportation	16,523,330	184,644,221	173,963,061
General & Administrative	2,020,966	32,639,368	28,916,816
Railway Operating Expenses	33,380,973	400,356,756	378,310,110
NET REVENUE FROM RAILWAY OPERATIONS	(3,616,305)	(8,741,258)	(15,338,893)

Other Income	1,789,347	8,103,410	8,900,040
Equity in Earnings (Losses) of Affiltd. Cos. .	300,599	680,876	(1,194,837)
Miscellaneous Deduction from Income	325,114	1,348,359	754,610
INCOME AVAILABLE FOR FIXED CHARGES	(1,851,473)	(1,305,331)	(8,388,300)
Fixed Charges	1,365,145	15,872,671	16,011,807
Contingent Interest	—	—	—
NET INCOME (LOSS) (SEE NOTE)	$(3,216,618)	$(17,178,002)	$(24,400,107)

Certified Correct:
/s/ VICTOR C. BOHNE
Comptroller

• Restated to conform to 1978 accounting requirements.

Notes: 1. In November 1976 the Financial Accounting Standards Board issued its Statement No. 13 "Accounting for Leases" requiring leases meeting certain criteria to be capitalized. Retroactive accounting was optional for leases implemented prior to January 1, 1978. This rule was adopted by the Interstate Commerce Commission in their Order No. 36604 dated October 12, 1977. Subsequently, the Securities and Exchange Commission in their Accounting Series Release No. 225 made retroactive adjustment mandatory in statements for companies with fiscal years ending after December 24, 1978. Accordingly, the table below reflects the required adjustment included in the above figures.

LOSS BEFORE RETROACTIVE ADOPTION OF F.A.S. 13	$(2,946,368)	$(13,935,002)	$(20,093,107)
Increase in depreciation	(727,833)	(8,734,000)	(8,563,000)
Increase in interest	(1,014,667)	(12,176,000)	(12,691,000)
Decrease in rents	1,472,250	17,667,000	16,947,000
Net effect on loss	(270,250)	(3,243,000)	(4,307,000)
Loss for the period (after adjustments) as above	$(3,216,618)	$(17,178,002)	$(24,400,107)

2. The Company's results of operations are included in Retained Income without adjustment which ultimately may result from Company's entry into reorganization under the Bankruptcy Act on March 17, 1975.

3. Revaluation of assets as a result of possible permanent impairment and other adjustments which may be required as a result of examination and audit of the accounts are not reflected in this statement.

February 14, 1979

Notes:

1. The company's results of operations are included in Retained Income without adjustment which ultimately may result from company's entry into reorganization under the Bankruptcy Act on March 17, 1975.

2. Revaluation of assets which may occur as a result of the liquiadtion procedure and other adjustments which may be required as a result of examination and audit of the accounts are not reflected in this statement.

3. Effective with court-ordered liquidation in 1980, capitalization of long-term leases under ICC Order #36604 was no longer required. Accruals have been discontinued in August 1980. The effect of this requirement resulted in adjustments increasing net loss for the first seven months of 1980 by $2,889,000 and increasing net loss for the year of 1979 by $3,007,000.

4. The above statement was prepared without benefit of an agreement between the Trustee of the Chicago, Rock Island and Pacific Railroad Company and the Kansas City Terminal Company, Directed Rail Carrier, for use of Trusetee's property and/or costs of services rendered by Directed Rail Carrier for the Trustee. Such items were included on an estimated basis and may be subsequently adjusted.

5. The Trustee contests the compensation formula prescribed by the ICC for the use of the property by carriers, including the RTA, operating pursuant to Commission Directed Service Orders. Except for such carriers with which he has reached lease agreements and except for the KCT during its tenure, the Trustee has accrued rents for the DSO carriers based upon the Commission's Frisco formula of compensation. The Frisco formula orders have been appealed by the Trustee and the appeals are pending in the ICC and the U. S. Seventh Circuit Court of Appeals. Consequently, the Trustee contends that he is due an additional cumulative amount of $18,367,445, as well as past due rental from the KCT in an amount not yet determined.

March 11, 1981

Peat, Marwick, Mitchell & Co.
Report to the Reorganization Court
January 21, 1980

CHAPTER X: ANALYSIS

The Trustee's plan for the Rock Island Core System must be evaluated in terms of the economic attractiveness of the railroad, as presented in the Trustee's plan, the financial feasibility, as measured in terms of ability to pay obligations incurred, and the financial risk associated with uncertain future occurrences. Our analysis of the Core System focuses on profiles of these three key areas.

In preparing this report, PMM&Co. relied upon secondary information provided by the Rock Island Railroad, Creditors, Trustee, U.S. Government, Interstate Commerce Commission, and Association of American Railroads, without verifying such data. The achievement of any financial projections may be affected by possible fluctuating economic conditions and depends on the occurrence of future events, which cannot be assured. Therefore, actual results achieved may vary from the projections and such variations might be material.

This report is intended solely for the internal information of the Court, the Creditors, the Trustee, and the U.S. Department of Transportation. It is not to be referred to any other party for obtaining financing or for any other purpose.

This section presents our approach to the analysis of the Core System and the results of the analysis for four cases.

APPROACH

Our analysis of the Core System centered on complete economic and financial profiles of the Core System in four separate cases:

- Trustee's Core (corrected), incorporating the corrections described in earlier sections of this report;

- Trustee's Core (adjusted), incorporating alternative assumptions described in the earlier sections;
- Trustee's Core (adjusted), No Demand Traffic, incorporating the effects of eliminating "demand" traffic from the Core System's traffic base; and
- Trustee's Core (adjusted), No Demand Traffic and No Growth, incorporating the effects of operating the Core System with traffic that existed only in 1978.

Between the December 28, 1979, submission of the Trustee's plan and the preparation of this report, the Trustee prepared a revised income statement for the Core System based, in part, on the corrections and adjustments communicated to the Trustee in the course of our review. Because of the late date at which we received the revised plan (January 16, 1979) [*sic*], it was impossible to review the revisions and prepare complete profiles for a fifth case: Trustee's Revised Core. We did prepare the economic indicators of the Trustee's revised Core System without reviewing it. We did note that not all corrections and adjustments were incorporated.

Economic and Financial Profiles

The economic and financial indicators used in the analysis were:

- the cash flows generated by the Core System;
- the internal rate of return (IRR) provided by the net cash flows;
- the earnings before interest and taxes;
- the loan amounts required to finance the cash requirements of the Core; and
- the ability of the Core System to generate sufficient cash to repay its loans.

These indicators were developed using the economic analysis model prepared in Phase I and described in our Phase

I Report (attached as Appendix A) and a loan repayment model (described in Appendix B) prepared for this phase of the study.

Analyses were performed using both constant 1978 dollars and inflated dollars to permit a critical distinction to be made between the economic indicators and the financial indicators. Cash flows and IRR are most properly evaluated in terms of constant dollars, reflecting the real economic return of the Core System. Loan balances and payments are most properly evaluated in terms of inflated dollars, since principal payments and interest payments will actually be made with inflated dollars. Loan balances, reflecting cash requirements of the core, must similarly be stated in terms of the inflated dollar requirements for rehabilitation or other needs.

Revenue and Cost Inflation Rates

PMM&Co.'s financial analysis of the Rock Island Core System required the development and application of inflation rates for revenue and expense accounts to generate current dollar financial statements for the years 1980 through 1985. Separate inflation rates were developed for revenues, materials and wage expenses less fuel expenses, fuel expenses, and car hire expenses. Together, these inflation rates were applied to the revenue and expense accounts to develop current-dollar financial analysis statements for the Core System in 1980 through 1985. As indicated above, actual rates were used wherever possible to index the 1978 dollars to actual 1979 levels. The rates developed for this study are listed in Exhibit X-1. The basis for each of these rates is discussed below.

Revenue Inflation Rate

The inflation rate for revenue is based on the Price Indexes for Total Railroad Freight, produced monthly by the U.S. Department of Labor, Bureau of Labor Statistics. The actual rate for 1979—13.8 percent—was used to index the

1978 revenues to 1979 levels. For the period 1980-1985, a 10.3 percent inflation rate, compounded annually, was used. This rate was developed by generating a least-squares regression equation for the average annual indexes for the years 1973 to 1978. The resulting rate represents the slope of the log function used to model the time-series of revenue indexes.

Total Cost Inflation Rate

The inflation rates for railroad fuel, material, and supplies are based upon the Railroad Charge-Out Prices and Wages produced quarterly by the Economics and Finance Department of the Association of American Railroads. The indexes for all wages and material prices for between 1973 and 1978 were applied to a least-squares regression of a log function to develop an average overall annual inflation rate of 11.0 percent. A comparison of this inflation rate with that developed for revenues reveals that railroad revenues have historically lagged behind cost increases. To model this revenue lag, the 10.3 percent annual inflation rate was used for revenues after 1979. In the case of modeling revenues and expenses without a lag, the 11.0 percent annual inflation rate was used for revenues after 1979.

Total Cost Less Fuel Cost Inflation Rate

In recent years, fuel costs have demonstrated an independent behavior different from other railroad cost categories. To account for these differences, 2 sets of inflation rates were developed. The first was for costs excluding fuel, and the second was for costs of fuel alone. As described above, the actual cost indexes for 1978 and 1979 were used to identify the 1979 inflation rate for total costs less fuel costs. This was 10.6 percent in 1979. The component indexes for these costs for the years 1973-1978 were applied to a least-squares regression equation for a log function, whose slope provided the predicted inflation rate of 10.1 percent for the years 1980-1985.

EXHIBIT X-1

REVENUE AND COST INFLATION RATES
1979-1985

REVENUE AND COST CATEGORIES	ACTUAL 1979	PROJECTED 1980-1985
Revenues [1]	13.8%	10.3%
Materials and Wage Rates (Including Fuel) [2]	17.9%	11.0%
Materials and Wage Rates (Excluding Fuel) [2]	10.6%	10.1%
Fuel [2]	81.7%	20.8%
Car Hire [3]	25.1%	6.0%

SOURCES:

[1] U.S. Price Indexes for Total Railroad Freight; U.S. Department of Labor, Bureau of Labor Statistics.

[2] U.S. Indexes of Charge-Out Prices and Wage Rates; Economics and Finance Department, Association of American Railroads.

[3] Association of American Railroads.

Fuel Cost Inflation Rate

A similar process for fuel costs alone produced an actual inflation rate of 81.7 percent for the year 1979. The predicted inflation rate for the period 1980-1985 was 20.8 percent.

Car Hire Inflation Rate

Car hire is the final cost item that behaves sufficiently differently to warrant an independent inflation rate. The rate used for car hire was 25.1 percent for 1979, and 6.0 percent for the years 1980-1985. The 25.1 percent increase was based in part upon the one-time 18.0 percent increase in car hire rates allowed in 1979 under Ex Parte 334 by the Interstate Commerce Commission to permit the railroads to recover the increased costs of capital through the application of daily car-hire rates. This rate was compounded by the average 6.0 percent increase historically permitted by the ICC on an annual basis.

Loan Assumptions

The Trustee's plan states that the Core System can generate sufficient cash to fund all of its capital requirements. The ability of the Core System to become self-sustaining on a cash basis by 1985 was one major focus of this analysis.

The Trustee's plan for funding temporary cash shortfalls for initial working capital and other cash needs was tested by using medium-term debt with a 6-year term. Thus, the Core System was required to liquidate its temporary borrowings by the end of 1985.

The rate of interest for this debt was assumed to be 10 percent, approximately the rate FRA has required for recent Title V loan guarantees. This rate is far below the current prime rate.

Presentation Format

The results of each case analysis are summarized in the text and presented in detail at the end of this section. Exhibit X-2 presents a comparison of the items included in the summary tables, and the detailed computer runs prepared for each case are presented in Appendix C.

RESULTS OF ANALYSIS

Using the approach described above, we prepared economic and financial profiles of each of the four cases tested. The results of each case are discussed below.

EXHIBIT X-2

ROCK ISLAND CORE SYSTEM
CORRESPONDENCE OF LINE ITEMS

PMM&Co. Financial Analysis Line Items	Corresponding Line Items in Trustee's Income Statement
Capital Requirements	
Fixed Plant	Fixed Plant Rehabilitation
Rolling Stock	Locomotive Rehabilitation Car Rehabilitation Facility
Other	Working Capital Requirement
Revenues	
Freight	Freight Revenue Muscatine Coal Revenue
Demurrage	Demurrage
Switching	Switching
Joint Facilities (Net)	Joint Facility Expense Joint Facility Rents (Dr or Cr)
Car Rental	Car Rental Receivable Trailer Rental Receivable
Other Revenues	Passenger Revenues Grants and Subsidies Other Revenues
Operating Expenses	
Transportation	Transportation Operating Staff
Fuel Cost	Fuel Cost
Loss and Damage	Loss and Damage

PMM&Co. Financial Analysis Line Items	Corresponding Line Items in Trustee's Income Statement
Foreign Car Hire	Foreign Car Hire
Freight Car Leases	Freight Car Leases Trailer Leases
Locomotive Leases	Locomotive Leases
Other Expenses	
Maintenance of Way	Engineering Engineering Programs
Maintenance of Equipment	Mechanical Mechanical Programs
General	Finance General - Staff
Traffic	Marketing
Property Taxes	Railway Tax Accruals
Other	Passenger Services Expenses Other Expenses Fixed Charges
Depreciation and Non-Cash Charges	Depreciation Net Effect of Capitalized Leases
Amortizations	—
Nonoperating Cash Flow/Income	Earnings of Affiliated Cos.

* Amortization is calculated for the following items:

Trustee's Certificate #162
Trustee's Certificate #193
Claims for Equipment Rehabilitation
Claims for Track Work
Back Pay

Trustee's Core (Corrected)

As described in earlier sections, we corrected the plan as presented in the Trustee's submission of December 28, 1979. These corrections represent clerical and arithmetic errors as well as omissions of items. Detailed discussion of these corrections can be found in Sections II through IX of this report and are summarized in Exhibit X-3. The economic and financial profile of the Trustee's Core (corrected) is shown in Exhibit X-4.

The IRR of the Trustee's Core (corrected) is only relevant from an economic perspective for the constant dollar results obtained. This represents the real economic return of the capital required. For this case, the IRR was 23.7 percent. This indicates that the Core System has positive economic value. The IRRs for the inflated cases are not valid for comparison purposes since they are completely the product of the constant dollar IRR and the inflation assumptions used.

For loan repayment purposes, the inflated cases are the appropriate indicators of the degree to which the Core System can generate sufficient cash to fund its capital requirements. Under the assumption of no regulatory lag in revenues, the Core (corrected) appears to generate enough funds to liquidate the intermediate debt required over the first six years of operation. (However, it is noted that new capital debt should be incurred in 1986 and beyond.)

Under the assumption that regulatory lag in revenues will continue to exist, the ability of the Trustee's Core (corrected) to liquidate its debt is diminished. Under this assumption, $5.4 million of debt remains outstanding at the end of 1985.

Trustee's Core (Adjusted)

As described in earlier sections, the Trustee's Core (corrected) was adjusted by what we believe are more reason-

able assumptions from the operations, cost incurrence, mechanical, engineering, and freight car revenue point of view. These adjustments are summarized in Exhibit X-5. The economic and financial profile of the Trustee's Core (Adjusted) is shown in Exhibit X-6.

The IRR and loan repayment capability of this case are clearly unfavorable. The IRR in this case was less than zero percent. The more favorable "no lag" inflation assumption generates insufficient funds to meet the other capital requirements of the Core System. At the end of 1985, the system has $172 million in debt outstanding. The "lag" inflation assumption has $228 million in debt outstanding at the end of 1985.

EXHIBIT X-3

SUMMARY OF CORRECTIONS TO TRUSTEE'S PLAN OF 12-28-79

	Trustee's Plan 12-28-79		Trustee's Plan Corrected	
	1980	1985	1980	1985
Capital Requirements				
Fixed Plant	14,380	0	14,380	0
Rolling Stock	5,633	5,633	5,633	5,634
Other	20,000	0	20,000	0
Revenues				
Freight	168,621	205,958	168,431	205,726
Demurrage	2,799	3,352	2,799	3,352
Switching	4,427	4,427	4,427	4,427
Joint Facilities (Net)	—4,841	—5,578	—5,403	—5,578
Car Rental	60,953	44,007	59,289	42,843
Other Revenues	10,994	11,181	10,991	11,179
Operating Expenses				
Transportation	52,726	55,126	53,362	53,686
Fuel Cost	12,496	15,626	12,496	15,626
Loss & Damage	3,234	3,615	3,234	3,615
Foreign Car Hire	21,227	23,631	23,261	27,137
Freight Car Leases	35,641	36,382	36,679	37,402
Locomotive Leases	5,184	4,829	5,184	4,829
Other Expenses				
Maintenance of Way	24,359	24,046	24,359	24,046
Maintenance of Equipment	34,962	27,486	34,962	27,486
General	16,421	17,843	16,421	17,843
Traffic	6,071	6,071	6,071	6,071
Property Taxes	1,035	1,035	1,035	1,035
Other	5,646	7,122	11,491	9,841
Depreciation & Non-Cash Charges	9,206	8,351	6,708	5,867
Amortizations	0	0	—6,938	—2,733
Non-Operating Cash Flow/Income	681	681	681	681

EXHIBIT X-4

ROCK ISLAND TRUSTEE'S CORE PLAN
ASSUMING REGULATORY LAG IN REVENUES
(Dollars in Thousands)

CORRECTED

	Not Inflated		Inflated No Lag		Inflated Lag	
	1980	1985	1980	1985	1980	1985
ECONOMIC ANAYSIS:						
Capital Requirements	$ 40,013	$ 5,634	44,376	11,098	44,376	11,098
Revenues	240,534	261,949	307,529	542,479	306,080	524,952
Operating Expenses	134,216	142,295	166,280	295,094	166,280	295,094
Other Expenses	94,339	86,322	114,421	169,493	114,421	169,493
Operating Cash Flow	11,979	33,332	26,828	77,892	25,379	60,365
Amortizations	—6,938	—2,733	—6,938	—2,733	—6,938	—2,733
Non-Operating Cash Flow	681	681	829	1,342	829	1,342
NCF Before Interest and Taxes	5,722	31,280	20,719	76,501	19,270	58,974
Net Cash Flow	—34,291	25,646	—23,657	65,403	—25,106	47,876
Internal Rate of Returr	23.7	—	67.3	—	49.2	—

EXHIBIT X-5

SUMMARY OF ADJUSTMENTS TO CORRECTED TRUSTEE'S PLAN

	Trustee's Plan Adjusted		Trustee's Plan Corrected	
	1980	1985	1980	1985
Capital Requirements				
Fixed Plant	16,243	0	14,380	0
Rolling Stock	6,535	6,535	5,633	5,634
Other	20,000	0	20,000	0
Revenues				
Freight	168,383	202,317	168,431	205,726
Demurrage	2,799	3,352	2,799	3,352
Switching	4,427	4,427	4,427	4,427
Joint Facilities (Net)	—5,403	—5,578	—5,403	—5,578
Car Rental	56,790	35,612	59,289	42,843
Other Revenues	10,991	11,179	10,991	11,179
Operating Expenses				
Transportation	54,809	55,201	53,362	53,686
Fuel Cost	12,598	15,742	12,496	15,626
Loss & Damage	3,234	3,615	3,234	3,615
Foreign Car Hire	23,261	27,137	23,261	27,137
Freight Car Leases	36,679	41,086	36,679	37,402
Locomotive Leases	5,184	4,829	5,184	4,829
Other Expenses				
Maintenance of Way	30,562	30,562	24,359	24,046
Maintenance of Equipment	34,136	24,557	34,962	27,486
General	16,421	17,843	16,421	17,843
Traffic	6,071	6,071	6,071	6,071
Property Taxes	1,035	1,035	1,035	1,035
Other	11,569	9,919	11,491	9,841
Depreciation & Non-Cash Charges	6,708	5,867	6,708	5,867
Amortizations	—6,938	—2,733	—6,938	—2,733
Non-Operating Cash Flow/Income	681	681	681	681

Both inflation assumptions indicate that the Trustee's Core (Adjusted) will require additional debt to repay start-up rehabilitation and working capital debt as well as funding continuing capital programs.

Lower Traffic Cases

The analysis of the first two cases describes the economic and financial profiles of the Trustee's Core under differing assumptions but with the same optimistic traffic level. If the Core System does not achieve the traffic levels forecast in Section II, the Core as described in the Trustee's plan cannot achieve financial viability; it continues to require borrowing not only to refund past debt and fund new capital requirements but also to cover its operating deficits.

Exhibits X-7 and X-8 present the economic and financial profiles of lower traffic cases at successively lower traffic levels. It is interesting to note that the lowest traffic case exhibits slightly better economic and financial performance than the intermediate traffic case. This apparent contradiction is due directly to the additive effect of increased car rental income.

Trustee's Core (Revised)

Exhibit X-9 presents the Trustee's Core as revised in his errata sheets received January 16, 1980. We present these strictly for the information of the Court. We have neither reviewed the notes for errors nor evaluated the underlying assumptions of this revised plan.

• • •

This report reflects our economic and financial analysis of the Core System. PMM&Co. was not requested to evaluate the labor protection payments that may result from contracting to a Core System. Similarly, we were not requested to evaluate the public good associated with continued public financial support of the Core System.

EXHIBIT X-9

TRUSTEE'S CORE ERRATA SHEETS

	Not Inflated	
	1980	1985
ECONOMIC ANALYSIS:		
Capital Requirements	40,013	5,634
Revenues	241,646	261,988
Operating Expenses	133,230	140,177
Other Expenses	92,153	81,880
Operating Cash Flow	16,263	39,931
Amortizations	—6,938	—2,773
Non-Operating Cash Flow	681	681
NCF Before Interest and Taxes	10,006	37,879
Net Cash Flow	—30,007	32,245
Internal Rate of Return	32.5	—
FINANCIAL ANALYSIS:		
Depreciation and Noncash Charges	7,082	6,227
Total Expenses	232,465	228,284
Operating Income	9,181	33,704
Non-Operating Income	681	681
Earnings Before Financing and Taxes	9,862	34,385
LOAN REPAYMENT:		
Beginning Balance	0	58,109
Ending Balance	34,827	32,239
Loan Payment Required (Principal and Interest)	9,187	64,484
Coverage Ratio	1,089	.587

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 75 B 2697

In Proceedings for the Reorganization of a Railroad

In the Matter of:

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY,
Debtor.

RESPONSE OF INTERVENORS CROWN ET AL. TO TRUSTEE'S REPORT FOR 1978 AND FOUR MONTHS 1979

ALBERT E. JENNER, JR.
DANIEL R. MURRAY
CARTER H. KLEIN
LINDA H. MULLENBACH
JENNER & BLOCK
One IBM Plaza
Room 4400
Chicago, Illinois 60611
312/222-9350

September 6, 1979

• • •

B. EARNINGS

The second criterion on which we must judge the Rock Island's performance is its earnings. Last September, Mr. Manos represented to the Court that:

> "we are close, now—close as we have been in the three and a half years of this reorganization—to the formulation and filing of a plan. I state that with confidence."

(Tr. Sept. 18, 1978, at p.5.)

The basis for Mr. Manos' confidence was the upturn in carloadings and profitability he discerned in the summer

and fall of 1978. In order to test that confidence, we must look to the earnings record of the Rock Island in 1978 and subsequently in 1979. Specifically, we must view that record from three different perspectives:

(1) in the light of the Rock Island's prior history of earnings,

(2) in light of the earnings of other railroads, and

(3) in light of the Trustee's own forecasts.

From all three perspectives, the magnitude of the Rock Island's losses in 1978 and the first half of 1979 is staggering. Those losses prove conclusively that the Rock Island is not reorganizable on an income basis.

(1) *The Rock Island's earnings history.*

Last September, Mr. Manos made the following representations to the Court:

"What I am saying, your Honor, is that our act was in place—if it wasn't for that hard winter [1977-1978], I don't believe that we would even have, at this moment, the accumulated deficit through July of eleven or twelve million—I think it's less—it's eleven million now, it's going down. *However, since then, the Rock Island has dramatically reversed the trend.* In May, it had a profit, on a fully accrued basis of $234,000—that's a black bottom line.

"How did we do it? We had carloads of 66,887 cars versus 65,540 in 1977, when we lost a small amount—$225,000.

"In June, the Rock Island had a profit of $1,070,000, on a fully accrued basis; and it did it with 68,086 cars, an increase over 1977, when we had 65,295 cars.

"In July, w had a small loss of less than a half a million dollars; but there we had the loss because our car-

loadings went down a little bit to 60,025 cars as against 62,407 in 1977. But it proved a point that when we go below a certain figure on monthly carloads, we have a small loss. *But I say to your Honor that we are going to have consistant [sic] months, now, in profitability* of over 65,000 carloads per month. *That is going to be the pattern, in my opinion*—I'm cautiously optimistic about that from here on in."

(Tr. Sept. 18, 1978, at pp. 16-17) (Emphasis added). Mr. Manos repeated and strengthened that pledge later in his report:

> *"No way is the Rock Island going to lose twenty or $22,000,000 annually from here on in—it's not going to happen.* It happened in the first six months, but it's not going to happen in the last half of 1978, your Honor, I assure you."

(Tr. Sept. 18, 1978, at p. 101) (Emphasis added).

Unfortunately, Mr. Manos' confidence was misplaced. Table X displays the monthly losses of the Rock Island in 1978.

TABLE X

ROCK ISLAND NET INCOME (LOSS)

1978

(in millions of dollars)

	ICC Basis	Rock Island's Depreciation Basis
January	(3.8)	(3.9)
February	(4.8)	(5.6)
March	(.6)	(1.7)
April	(1.5)	(1.6)
May	(.2)	.2
June	.4	1.1
July	(.5)	.5
August	.5	.5
September	(.5)	.8
October	.4	1.4
November	(2.7)	(2.1)
December	(3.6)	(3.2)

The Rock Island did break slightly into the black in the summer and early fall—traditionally its best months. But the familiar pattern of losses resumed in November—*with a vengeance.* As a result, in 1978 after year-end adjustments, the Rock Island lost $21.2 million on an ICC accounting basis and $17.9 million on the Trustee's own depreciation accounting basis. These figures would have been much larger had the Trustee paid his employees the national wage scale *and* properly maintained his physical plant.

Current losses of the Rock Island are the largest it has ever experienced in its 105 year history. This is so even though the losses represent the experience of only six months, as shown by Table XI below.

FINANCIAL ANALYSIS:						
Depreciation and Noncash Charges	6,708	5,867	6,708	5,867	6,708	5,867
Total Expenses	233,263	234,484	287,409	470,454	287,409	470,454
Operating Income	5,271	27,465	20,120	72,025	18,671	54,498
Non-Operating Income	681	681	829	1,342	829	1,342
Earnings Before Financing and Taxes	5,952	28,146	20,949	73,367	19,500	55,840
LOAN REPAYMENT:						
Beginning Balance	0	84,874	0	29,268	0	40,318
Ending Balance	38,292	68,279	38,625	0	38,625	5,405
Loan Payment Required (Principal and Interest)	9,187	93,925	10,189	32,194	10,189	44,890
Coverage Ratio	.622	.333	2.033	2.376	1.891	1.313

EXHIBIT X-6

ROCK ISLAND TRUSTEE'S CORE PLAN
ASSUMING REGULATORY LAG IN REVENUES
(Dollars in Thousands)

ADJUSTED

	Not Inflated		Inflated No Lag		Inflated Lag	
	1980	1985	1980	1985	1980	1985
ECONOMIC ANALYSIS:						
Capital Requirements	42,778	6,535	47,744	12,874	47,744	12,874
Revenues	237,987	251,309	304,156	522,394	302,707	505,140
Operating Expenses	135,765	147,610	171,056	310,995	171,056	310,995
Other Expenses	99,794	89,987	121,066	176,713	121,066	176,713
Operating Cash Flow	2,428	13,712	12,034	34,686	10,585	17,432
Amortizations	—6,938	—2,733	—6,938	—2,733	—6,938	—2,733
Non-Operating Cash Flow	681	681	829	1,342	829	1,342
NCF Before Interest and Taxes	—3,829	11,660	5,925	33,295	4,476	16,041
Net Cash Flow	—46,607	5,125	—41,819	20,421	—43,268	3,167
Internal Rate of Return	•	—	12.2	—	•	—

• Less than zero.

FINANCIAL ANALYSIS:						
Depreciation and Noncash Charges	6,708	5,867	6,708	5,867	6,708	5,867
Total Expenses	242,267	243,464	298,830	493,575	298,830	493,575
Operating Income	—4,280	7,845	5,326	28,819	3,877	11,565
Non-Operating Income	681	681	829	1,342	829	1,342
Earnings Before Financing and Taxes	—3,599	8,526	6,155	30,161	4,706	12,907
LOAN REPAYMENT:						
Beginning Balance	0	185,248	0	173,526	0	209,014
Ending Balance	51,076	199,302	46,593	171,745	48,042	228,036
Loan Payment Required (Principal and Interest)	9,822	204,427	10,962	192,166	10,962	231,203
Coverage Ratio	—.389	.057	.54	.173	.408	.069

EXHIBIT X-7

ROCK ISLAND TRUSTEE'S CORE (ADJUSTED)
NO DEMAND TRAFFIC
(Dollars in Thousands)

NO DEMAND

	Not Inflated		Inflated No Lag		Inflated Lag	
	1980	1985	1980	1985	1980	1985
ECONOMIC ANALYSIS:						
Capital Requirements	42,778	6,535	47,744	12,874	47,744	12,874
Revenues	222,003	230,218	283,820	473,990	282,660	459,815
Operating Expenses	128,118	136,868	160,121	295,887	160,121	295,887
Other Expenses	99,746	89,943	121,008	176,627	121,008	176,627
Operating Cash Flow	—5,861	3,407	2,691	1,476	1,531	—12,699
Amortizations	—6,938	—2,733	—6,938	—2,733	—6,938	—2,733
Non-Operating Cash Flow	681	681	829	1,342	829	1,342
NCF Before Interest and Taxes	—12,118	1,355	—3,418	85	—4,578	—14,090
Net Cash Flow	54,896	—5,180	51,162	—12,789	—52,322	—26,964
Internal Rate of Return	•	—	•	—	•	—

• Less than zero.

FINANCIAL ANALYSIS:						
Depreciation and Noncash Charges	6,708	3,867	6,708	5,867	6,708	5,867
Total Expenses	234,572	230,678	287,837	478,381	287,837	478,381
Operating Income	—12,569	—460	—4,017	—4,391	—5,177	—18,566
Non-Operating Income	681	681	829	1,342	829	1,342
Earnings Before Financing and Taxes	—11,888	221	—3,188	—3,049	—4,348	—17,224
LOAN REPAYMENT:						
Beginning Balance	0	243,153	0	282,258	0	312,464
Ending Balance	59,780	273,301	56,107	324,560	57,325	372,666
Loan Payment Required (Principal and Interest)	9,822	268,121	10,962	311,771	10,962	344,998
Coverage Ratio	—1.233	.005	—.311	0	—.417	—.040

EXHIBIT X-8

ROCK ISLAND TRUSTEE'S CORE (ADJUSTED)
NO DEMAND TRAFFIC NO GROWTH—INCLUDING COAL TRAFFIC
(Dollars in Thousands)

ADJUSTED

	Not Inflated		Inflated No Lag		Inflated Lag	
	1980	1985	1980	1985	1980	1985
ECONOMIC ANALYSIS:						
Capital Requirements	42,778	6,535	47,744	12,874	47,744	12,874
Revenues	222,003	223,568	283,822	452,129	282,660	440,188
Operating Expenses	128,118	124,793	160,121	264,236	160,121	264,236
Other Expenses	99,746	89,863	121,008	176,469	121,008	176,469
Operating Cash Flow	—5,861	8,912	2,693	11,424	1,531	—517
Amortizations	—6,938	—2,733	—6,938	—2,733	—6,938	—2,733
Non-Operating Cash Flow	681	681	829	1,342	829	1,342
NCF Before Interest and Taxes	—12,118	6,860	—3,416	10,033	—4,578	—1,908
Net Cash Flow	—54,896	325	—51,160	—2,841	—52,322	—14,782
Internal Rate of Return	•	—	•	—	•	—

• Less than zero.

FINANCIAL ANALYSIS:						
Depreciation and Noncash Charges	6,708	3,867	6,708	3,867	6,708	3,867
Total Expenses	234,572	218,523	287,837	444,572	287,837	444,572
Operating Income	—12,569	5,045	—4,015	7,557	—5,177	—4,384
Non-Operating Income	681	681	829	1,342	829	1,342
Earnings Before Financing and Taxes	—11,888	5,726	—3,186	8,899	—4,348	—3,042
LOAN REPAYMENT:						
Beginning Balance	0	229,144	0	255,577	0	282,813
Ending Balance	59,780	252,387	56,105	285,263	57,325	327,259
Loan Payment Required (Principal and Interest)	9,822	252,712	10,962	282,422	10,962	312,382
Coverage Ratio	—1.233	0.027	—0.311	0.035	—0.417	—0.006

TABLE XI

ROCK ISLAND LOSSES

January-June, 1979

(in millions of dollars)

	ICC Basis	Depreciation Basis
January	(8.6)	(9.1)
February	(10.5)	(11.4)
March	(9.6)	(10.2)
April	(5.9)	(6.0)
May	(5.7)	(6.0)
June	(4.6)	(4.0)
Total	(45.1)	(46.7)

Although the Trustee blames the severe winter for his losses, that reason fails to explain why losses are so great in the months of March, April, May and June, months which customarily benefit from revenue traffic that could not be hauled earlier because of the winter. Where are the benefits of the new locomotive power? Where are the benefits of the thousands of new and rehabilitated cars that the Trustee has prevailed upon the Court to obtain? Where are the benefits of the Trustee's much touted rehabilitation and marketing efforts? Translated into earnings, they are nowhere to be seen.

The Trustee's insistence upon a traditional income based reorganization of the Rock Island is frightening because of the Rock Island's consistent pattern of losses since 1965—a period approaching 15 years. *The magnitude of those losses now exceeds a staggering quarter of a billion dollars.* Over sixty percent of that sum, $157.3 million, has been incurred in the post-reorganization years from 1975 through June, 1979.

Yearly losses, particularly since 1974, have accelerated, as shown by Table XII below:

TABLE XII

ROCK ISLAND NET LOSSES

1965-1979

ICC Accounting

(in millions of dollars)

Year	Net Loss
1965	(1.5)
1966	(3.6)
1967	(16.7)
1968	(4.8)
1969	(9.8)
1970	(16.6)
1971	(6.4)
1972	(5.9)
1973	(15.0)
1974	(23.1)
1975	(31.2)
1976	(25.0)
1977	(34.8)
1978	(21.2)
1979*	(45.1)
Total	($260.7)

* Six months only.

Another informative, historical comparison of earnings that demonstrates the accelerated losses of the Rock Island comes from page four of the Trustee's Report for the Rock Island for 1976. Compared in that Report are the Rock Island's earnings for the five-year period 1972-1976 on the Trustee's own depreciation accounting basis. The Trustee's

comparisons show, amazingly, that instead of a loss, in 1972, the Rock Island operated at a profit, and that losses in pre-reorganization years were less than they would be on an ICC accounting basis, as demonstrated in Table XIII below. (This calls into serious question the Trustee's statements that under prior management the Rock Island was undermaintained in pre-reorganization periods, or, *more likely*, shows that the depreciation method of accounting is an unreliable indicator of proper maintenance levels.)

TABLE XIII

ROCK ISLAND NET INCOME (LOSS)

1972-1979

(in millions of dollars)

Year	Depreciation	ICC
1972	1.5	(5.9)
1973	(13.5)	(15.0)
1974	(17.5)	(23.1)
1975	(25.0)	(31.2)
1976	(14.0)	(25.0)
1977	(24.4)	(34.8)
1978	(17.2)	(21.2)
1979*	(46.7)	(45.6)

*Six months only.

The Trustee's Report describes 1978 as a "pivotal" year for the Rock Island—another way of saying that in 1978 the Rock Island "turned the corner." Trustee's Report, p. 5. One might ask pivotal to what? The Trustee presumably finds solace in the fact that the Trustee had smaller losses in 1978 than in 1977. But the same could have been said about 1976, because it too was preceded by a year with larger losses. 1976, however, was followed by a year with greater losses—a cycle the Rock Island will obviously

duplicate in 1979. In any event, it is inconceivable how the Trustee can take solace in losses ranging from $17 to $21 million (depending on the method of accounting).

Nevertheless, a comparison of the Trustee's "pivotal" year 1978 with 1976 might be instructive to ascertain if any real progress has been made in these proceedings in that two-year period. The Rock Island fared about the same income-wise in 1978 as it did in 1976, as Table XIV below shows. The table also reveals, however, that from an operations standpoint, the Rock Island fared much worse in 1978 than it did in 1976.

TABLE XIV

ROCK ISLAND INCOME PERFORMANCE

1978 VS. 1976

(depreciation basis)

(in thousands of dollars)

	1978	1976
Revenues	391,615	341,320
Expenses	409,290	355,412
Net Railway Operating Income	(17,675)	(14,092)
Income Available for Fixed Charges	(10,239)	(11,357)
Net Income (Loss) (without capitalization of leases)	(13,935)	(13,857)

Table XIV shows that 1978 was, if anything, *a significantly worse year than 1976*, as far as income generated from operations is concerned. In 1976 the Rock Island suffered net railway operating losses of $14.1 million compared with $17.7 million for 1978, or $3.6 million worse in 1978. Thus, operating losses were 25% greater in 1978 than

they were in 1976, using the Trustee's own depreciation method of accounting. It was only because the Trustee received $7.4 million in nonoperating income and other nonoperating credits compared with $2.7 million in 1976, that the Trustee was able to generate negative income for fixed charges and net losses in 1978 no worse than that of 1976.

(2) *Comparison with other railroads.*

At the status report last September, Mr. Manos asserted that the Rock Island's heavy losses in the winter months were no different from the losses experienced by other railroads:

> "Your Honor, I repeat that the first four months were a loss—we lost 12.8 million through April—there was a reason for that. There was a very heavy winter [1977-78], as you recall, your Honor. This is not something that the Rock Island experienced alone; this is something that all of the railroads experienced."

(Tr. Sept. 18, 1978, at pp. 15-16.)

An examination of the reports rendered by other railroads reveals Mr. Manos' argument to be incorrect, with respect not only to 1978 but also to the first half of 1979.

Compared with its competitors, many of which experienced the same winter, Rock Island's earnings performance leaves it next to the bottom of the list for the first half of 1979.

Table XV shows the earnings of the Western District railroads, as well as the Illinois Central, the Norfolk & Western and the Elgin Joliet & Eastern (railroads which compete in the Western District but are not classified as Western District railroads).

TABLE XV

EARNINGS

First Half 1979

(in millions of dollars)

BN	109.0
N&W	100.8
UP	81.1
ATSF	61.3
SP	60.0
MP	53.3
SSW	25.6
DRGW	13.9
EJ&E	11.8
C&S	10.1
KCS	9.0
SLSF	8.0
Soo	7.8
FWD	7.2
DMIR	3.2
MKT	(0.4)
ICG	(8.4)
CNW	(38.1)
RI	(45.0)
CMSt.P	(59.1)

Source: ICC RE&I

The Rock Island's performance ranks ahead only of the seriously troubled bankrupt Milwaukee.

Reading the Trustee's Report, one is left (surface wise) with the impression that 1978 was a banner year for the Rock Island.

But how does it compare with its competitors in earnings? It was second to last, aheead only of the Milwaukee, as Table XVI shows:

TABLE XVI

NET INCOME (LOSS) 1978

(in millions of dollars)

N&W	165.2
UP	141.8
BN	113.6
MP	101.9
ATSF	92.5
SP	55.9
SSW	32.9
DRGW	24.5
Soo	23.3
SLSF	20.6
EJ&E	15.0
KCS	14.4
DMIR	6.3
FWD	5.8
WP*	5.5
C&S	3.4
MKT	2.4
ICG	(2.0)
CNW	(15.9)
RI	(21.2)
CMSt.P	(65.2)

Source: ICC RE&I

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* Excludes extraordinary item of $115,561,000. In short, the Trustee can find no solace in a comparison of his net losses with the performance of other railroads.

(3) *Comparison with Trustee's forecasts.*

The Trustee's Report attempts to impeach the FRA study of the Rock Island because it predicted $29.5 million in Rock Island losses in 1978 and actual losses were only $18 million. Trustee's Report, p. 5.

What the Trustee overlooks is that had he paid the national wage scale retroactive to January 1, 1978, as did all other railroads, the Trustee would have incurred $6-8 million in additional operating expenses because of increased labor costs. In addition, the FRA study assumed normalized maintenance expenditures for the Rock Island. The Rock Island, however, was dramatically undermaintained in 1978.[1] Allowing for these variables the FRA study was quite accurate. As for 1979, net losses predicted by the FRA will *understate* actual Rock Island losses by many millions of dollars.

If stones are to be cast at forecasters, the Trustee's own glass house is extremely vulnerable. We need only recall the following statements of the President of the Rock Island, Mr. Ingram, solemnly presented *under oath* to the Court and creditors to justify the borrowing of millions of dollars at the expense of creditors:

> "Good marketing will add $150 million to the *net* income of the railroad over a three-year development period. The annual rate of improvement at the end of the third year should be between $60 and $70 million." (Emphasis added.) Direct Testimony of Trustee's Witness John W. Ingram, p. 2 of Direct Testimony of Trustee's Petition for Authority to Issue Trustee's Certificates (Oct. 15, 1975) (hereinafter "ERSA Testimony").
>
> "John D. Mitros has been hired to eliminate surplus personnel and tighten management practices. Good progress has been made in this area. *It will add an*

[1] See pages 41-49, *infra*.

estimated $50 million annually to the net income of the railroad after a three-year program of improvement." *Id.* at 2.

"As we make further progress we will, in a reasonably short period of time, be fully viable even at current economic levels." *Id.* at 4.

"Revenues will increase more quickly than expenses and the ability of Rock Island to internally generate capital will be substantially greater than it has been since the 1950's." *Id.* at 4.

In 1976-77, the Trustee and his staff submitted forecasts to the FRA and the creditors in support of a proposed capital budget of $160 million. *Those forecasts proved so unreliable that even the Trustee's own personnel found them incredible and they were withdrawn* within months after they were submitted.

The Trustee's most recent forecast of earnings, submitted at the end of 1977 to the FRA and creditors, Base Case I, is likewise already obsolete.

An analysis of Base Case I underscores the unreliability and excessive optimism of the Trustee's forecasts. This forecast is the third and latest generated by the Trustee; each successive forecast revised downward traffic and hence revenues. Table XVII compares the Trustee's forecast in Base Case I with actual results.

TABLE XVII

ACTUAL vs. FORECASTED INCOME STATEMENT 1978

(in thousands of dollars)

	Forecasted	Actual	Difference	Favorable (Unfav.) Percentage
Total Revenues	416,685	391,616	(25,069)	(6.0)
Operating Expenses	318,367	315,183	3,184	1.0
Net Revenue	98,318	76,433	(21,885)	(22.2)
Tax Accruals	5,294	4,726	568	10.7
Rents	64,321	66,209	(1,888)	(2.9)
Net Railway Operating Income	28,703	5,498	(23,205)	(80.8)
Engineering and Mechanical Programs	32,532	34,493	(1,961)	(6.5)
Net Income (Loss)	306	(21,162)	(21,468)	(infinite)

Table XVII reveals that while revenues fell short of prediction by $25.1 million or 6%, operating expenses were only $3.2 million or one percent less than predicted. This largely contributed to a net railway operating income[3] shortfall of $23.2 million or 80.8% and a net income shortfall of $21.5 million. *The slight profit projected became a huge loss.* Moreover, these significant shortfalls in actual

[3] The Trustee's management income statement excludes from operating expense "programs" for mechanical and engineering expenses which normally would be included as operating expenses.

earnings occurred in the twelve months immediately following the month in which the forecasts were presented, further impeaching the credibility of the Trustee's entire forecasting process.

In summary, then, we find that Mr. Manos' predictions of an upturn in the earning power of the Rock Island, as with his predictions concerning carloadings, have proven completely mistaken. Since the fall of 1978, the Rock Island's record of net losses is an unmitigated catastrophe.

Since September, 1978, when Mr. Manos made his prediction that the Rock Island had "turned the corner," the Trustee has reported net losses totalling $51.5 million on an ICC basis and $49.8 million on the Trustee's own depreciation accounting basis. The breakeven months of the summer and early fall of 1978 have proven to be not only a "flash in the pan" but the "calm before the storm."

The Trustee thus has failed to rebut the presumption established by the creditors at the September 18, 1978 status report that the Rock Island is not reorganizable on a traditional income or other basis.

• • •

D. NET WORKING CAPITAL

One of the indicators of the state of health of a business is its net working capital position. Net working capital is the difference between short term assets and short term liabilities and other liabilities coming due within the year. It is a reliable indicator which shows whether the business is able to operate without resort to hand to mouth practices, juggling payables, and straining to meet current expenses by running down current assets and building up current liabilities.

During the course of the Trustee's administration, the working capital position of the railroad has deteriorated steadily, *significantly and alarmingly*. Table XXIII traces

the changes in the Rock Island's working capital position from December 31, 1973 through June 30, 1979.

TABLE XXIII

NET WORKING CAPITAL 1973-1979

(in millions of dollars)

	Net Working Capital (Deficit)
December 31, 1973	(25.8)
December 31, 1974	(26.0)
March 16, 1975	20.2
December 31, 1975	16.6
December 31, 1976	7.8
December 31, 1977	(9.7)
December 31, 1978	(26.2)
January 31, 1979	(33.1)
February 28, 1979	(41.4)
March 31, 1979	(48.0)
April 30, 1979	(50.4)
May 31, 1979	(52.4)
June 30, 1979	(52.2)

From 1973 to 1974, the railroad's working capital deteriorated in the amount of $250,000. Because of the reclassification of current liabilities to deferred liabilities as a result of the filing of the reorganization petition, the working capital position of the railroad improved by $46.2 million between December 31, 1974 and March 17, 1975. The Trustee was thus able to start his trusteeship with a substantial positive net working capital position of $20.2 million. Unfortunately, from March 17, 1975 to December 31, 1975, net working capital decreased by $3.7 million at a rate of 14.6 times that of 1974. During 1976 working capital deteriorated by $8.8 million or at a rate of 35 times the rate of deterioration of 1974. After December 31, 1976, net work-

ing capital dropped by $17.5 million, turning a positive $7.8 million to a deficit of $9.7 million. In 1978, the net working capital deficit increased by $16.5 million to $26.2 million, although part of the additional deficit resulted from capitalization of financing leases in accordance with newly adopted accounting procedures.

Despite the influx of millions in Federal funding, the Rock Island net working capital deficit doubled in the first six months of 1979. The deficit increased from an already huge $26.2 million to an incredible $52.2 million. It is little wonder that the Trustee's cash reserves are all but depleted in mid-summer, traditionally the Rock Island's most prosperous season of the year.

The Rock Island net working capital deficit even exceeds that of the bankrupt Milwaukee Road. At the end of the first quarter of 1979, the Milwaukee's net working capital deficit stood at $32.1 million compared to the Rock Island's deficit of $48.3 million, a difference of $16.2 million. Similarly, the Rock Island's increase in its net working capital deficit rivaled that of the Milwaukee for the 12-month period ending March 31, 1979. The Rock Island's deficit increased by $33.8 million, the Milwaukee's by $33.4 million, while the net working capital of 17 Western District railroads (including the Rock Island and the Milwaukee), and the N & W, EJE and ICG decreased on the average by only $4.25 million.

E. DETERIORATION IN CASH RESERVES

Rivaling its deterioration in net working capital is the Rock Island's deterioration in its cash reserves. For the first time in these proceedings, the Trustee's ability to meet his payroll became sufficiently in doubt that he sought authority to invade the escrow funds in late March of this year. Just when creditors were beginning to feel relieved because the authority was not exercised, the Trustee made a second request on June 27, 1979 for authority to invade

the escrow funds to meet the end of the month payroll. This request was not made during a severe winter or spring flooding. It came in late June when traffic flows should have been normalized and cash flows restored.

This second cash request, more than any other factor, demonstrates how close the Trustee, the creditors and shareholders, not to mention the public interest, are to the precipice. *Indeed,* the Rock Island is alive and gasping today not because of any ability to generate capital on its own, but by reason of RTA, shipper, State, ERSA, § 505 and § 511 4-R Act funding, the deferral of fixed and prepetition charges under § 77 of the Bankruptcy Act, and the payment of substandard union wage scales.

Creditors were amazed to learn in discussions with the Trustee's staff on the car leasing program on April 9, 1979 that the Rock Island, presumably for reasons of cash conservation, was not spending any of its internally generated funds in 1978 to repair rolling stock either before or after it received funding under the $33 million FRA § 511 car repair program. Instead, the Rock Island was relying solely on shipper sponsorship funds. *Little wonder that the Rock Island has maintained a huge inventory of bad order cars during the last several years.*

Similarly, the creditors also discovered that the Trustee's increasingly poor cash and net working capital position has severely further constrained the Trustee's minimal track maintenance projects, as noted above. In 1978, much of the limited rehabilitation work the Rock Island undertook was funded by the RTA, the State of Iowa and Iowa shippers. For example, of the 43.21 miles of new rail laid, 16.74 miles of it, or more than 38%, was RTA funded. Much of the remaining rail laid represented repair of northwest Iowa branch lines funded by interest-free loans from shippers and the State of Iowa.

We also note with extreme concern the Trustee's claim that he may be unable to fund for lack of cash the single

most important planning project of his Trusteeship, *i.e.*, the retention of an independent consultant to conduct a thorough study of the Rock Island's reorganization propsects and viability. Statements by Trustee's counsel in this regard are astounding because all that is involved is the rendition of 4,600 man hours of service by existing personnel and possibly the hiring of one or two additional employees. The total cost to the Rock Island should approximate only $100,000.00 (4600 man hours of Rock Island personnel × $20.00/hour).

Table XXIV below shows the Trustee's deteriorating cash position:

TABLE XXIV

ROCK ISLAND CASH AND SHORT TERM INVESTMENTS

(in millions of dollars)

Date	Amount
December 31, 1974	$ 3.6
March 17, 1975	6.8
December 31, 1975	20.8
December 31, 1976	19.6
December 31, 1977	16.4
December 31, 1978	16.6
January 31, 1979	12.0
February 28, 1979	4.6
March 31, 1979	4.6
April 30, 1979	3.2
May 31, 1979	3.9
June 30, 1979	3.0

Source: ICC CBS Reports and RI General Balance Sheets.

Table XXIV is deeply disturbing because the depletion of the Trustee's cash reserves has occurred in what is traditionally the Rock Island's most prosperous season of the year. As a result, the Trustee will enter the winter months of 1979 with no reserve of cash and the most unfavorable working capital deficit in its entire history.

If the Rock Island is afflicted by either (i) another severe winter, (ii) an economic recession of any significance at all or (iii) a crippling strike,[3] it will clearly not survive another year absent massive federal financial assistance supplied, if at all, at the expense of the creditors and the erosion of their security.

• • •

[3] Unfortunately, a strike is now in progress.

United States Court of Appeals
For The Seventh Circuit
Liquidation Order

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Chicago, Illinois 60604

ARGUED: DECEMBER 8, 1980

February 11, 1981.

Before

Hon. ROBERT A. SPRECHER, Circuit Judge
Hon. HARLINGTON WOOD, JR., Circuit Judge
Hon. WESLEY E. BROWN, Senior District Judge*

In the Matter of:

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY,
Debtor.

No. 80-1353

Appeal of:

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Intervenor.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

No. 75 B 2697

Frank J. McGarr, *Judge.*

ORDER

This case presents one aspect of the continuing saga of the decline of the Chicago, Rock Island and Pacific Railroad Company ("Rock Island"). There are two questions before us in this appeal:

(1) Did the district court, sitting as a railroad reorganization court under Section 77 of the Bankruptcy Act, 11 U.S.C. § 205, have the discretion to determine that the

* Honorable Wesley E. Brown, Senior District Judge for the District of Kansas, is sitting by designation.

Trustee's plan of reorganization was unworkable and to refuse to transmit that plan to the Interstate Commerce Commission ("ICC")?

(2) Did the district court, sitting as a railroad reorganization court, have the authority to order the Trustee to commence liquidation of the railroad?

The Railway Labor Executives' Association ("RLEA") argues that we should reverse the district court's order directing the Trustee to liquidate the Rock Island estate and that we should order the district court to transmit to the ICC the plan of reorganization filed by the Trustee on December 28, 1979. The Trustee of the Rock Island, William M. Gibbons, and various creditors of the Rock Island ("Creditors")[1] ask us to dismiss this appeal as moot or to affirm the actions of the district court.

I

On March 17, 1975, the Rock Island filed a petition for reorganization in the United States District Court for the Northern District of Illinois under Section 77 of the Bankruptcy Act, 11 U.S.C. § 205.[2] Judge McGarr was assigned

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[1] The parties referred to collectively as "Creditors" are as follows: First National Bank of Chicago and Continental Illinois National Bank and Trust Company of Chicago, in their capacities as indenture trustees, and Henry Crown, et al., holders of first mortgage bonds, income debentures and common stock of the Rock Island.

The Trustee joined in the Creditors' Brief solely on the ground that the liquidation is not reversible and is so far advanced that any delay would be physically and economically impossible.

[2] The Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (1978), enacted November 6, 1978, codified and changed the prior Bankruptcy Act, including former Section 77. Section 403(a) of the Bankruptcy Reform Act, 92 Stat. 2683, however, provides that pending reorganizations, such as the one at bar, were to be governed by the previous law except for a few exceptions set forth in Section 403(b).

to act as the reorganization court. On March 28, 1975, William M. Gibbons was appointed Trustee of the Rock Island and was instructed to manage and operate the debtor's railroad system.

Section 77(d) provides that "[t]he debtor, after a petition is filed . . . , shall file a plan of reorganization within six months of the entry of the order by the judge approving the petition as properly filed . . . ." 11 U.S.C. § 205(d). The reorganization court several times extended the deadline for the Trustee to file a plan of reorganization. The Trustee filed his Plan of Reorganization ("Plan") on December 28, 1979.[3] An informational copy was furnished to the ICC in accordance with Bankruptcy Rule 8-301(c).

On January 8, 1980, the court entered Order No. 221. In that order the court found: it had jurisdiction pursuant to Bankruptcy Rule 8-303[4] to retain the Plan for not less

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[3] Throughout the five years of reorganization prior to the filing of the Plan, the Rock Island suffered significant financial losses. The ICC found the Rock Island to be cashless on September 26, 1979, and ordered the Kansas City Terminal Railway Company ("KCT") to provide directed service over the Rock Island routes. *Directed Service Order No. 1398, Kansas City Terminal Ry.—Directed to Operate Over—Chicago, R. I. & P.*, 360 I.C.C. 289 (1979). This directed service was in effect at the time of the order appealed in the case at bar.

KCT's directed service ended on March 23, 1980. Following KCT's directed service operations, other rail carriers provided rail service over the Rock Island's lines through May 31, 1980, pursuant to ICC directed service orders. On May 30, 1980, the President signed the Rock Island Railroad Transition and Employee Assistance Act (the "Rock Island Act"), P.L. 96-254, 94 Stat. 339 (1980). The Rock Island Act provides for the continuation of directed service pending sales of the Rock Island's freight lines to other interested rail carriers and its Chicago-Joliet commuter line to the Regional Transportation Authority.

[4] Bankruptcy Rule 8-303 provides:

> Not less than 30 days after the first filing of a plan under Rule 8-301, the court shall transmit all plans and modifications which have been filed with it to the Interstate Commerce Commission for filing with and consideration by the Commission.

than thirty days; during that time the court would review the plan in the context of a study by Peat, Marwick & Mitchell, a court appointed independent consultant, and would consider modifications, alternative plans, and comments; the informational copy of the plan filed with the ICC did not constitute an official filing with the ICC; and the court would "formally transmit the Plan of Reorganization, modifications to it, and alternative plans, in accordance with Bankruptcy Rule 8-303, with whatever comments it may have, to the Commission for their action, pursuant to Bankruptcy Rule 8-303, with instruction to the Commission that the Commission should consider the Plan at that time."

On January 21, 1980, Peat, Marwick, Mitchell & Co. filed its report, in which it concluded that the core operation proposed by the Trustee in the Plan was not viable. At a status hearing on January 25, 1980, the Creditors and the Federal Railroad Administration argued that since the independent consultant had concluded that the Trustee's Plan was not feasible, the court should direct the Trustee to withdraw the Plan and to file a new plan which would provide for the total liquidation of the estate. The Creditors argued that the court would simply be wasting everyone's time in transmitting the Plan, or any reorganization plan, to the ICC. At that time, the Trustee argued that the Plan should be forwarded to the ICC for evaluation of the reorganizability of the core.

After listening to the arguments of counsel who were present at that status conference,[5] the court concluded that

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[5] The ICC did not appear at the hearing of January 25, 1980, although the ICC had been active in the proceedings to that date. At the January 25 hearing, John Broadley of the United States Department of Justice, representing the Federal Railroad Administration, stated:

> In connection with preparing a proposed order I had a discussion with Mr. Rush yesterday about the position the Com-

the consultant's report "is a good study and I am compelled to accept its conclusions." Tr. 97. The court continued:

> This being so I am compelled also, if logic prevails, to accept the conclusion that the plan of reorganization proposed by the Trustee has no hope of success.
>
> The Trustee is therefore instructed not to forward the plan of reorganization to the Commission. The Trustee is instructed to continue his present plans for cessation of operations by the time of the anticipated termination of the directed service order with the hope that that might be extended, and the Trustee is instructed to prepare and file with the Court a preliminary plan of liquidation . . . .

Tr. at 97. The court's minute order of January 25, 1980 granted the Creditors' motion that the court decline to forward the Plan to the ICC and directed the Trustee to begin preparation of a plan of liquidation.

On February 19, 1980, the RLEA filed comments on the court's January 25 order. The court ordered that it would treat the comments as a motion for reconsideration. On February 27, 1980, the court denied the RLEA's motion to reconsider. The RLEA appeals from both the order of January 25, 1980 and the denial of reconsideration.

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mission would likely take if your Honor entered an order directing the Trustee to withdraw this plan. Mr. Rush indicated that if your Honor entered such an order the Commission, in all likelihood, would not find it expedient, necessary or proper to appeal that decision on jurisdictional grounds. And the Commission has frequently expressed concern about the exercise of its primary jurisdiction. Mr. Rush's indication to me was that if your Honor finds that the plan has no merit and decides that you should order the Trustee to withdraw it, that the Commission would acquiesce in that decision.

Tr. at 56-57. Mr. Broadley joined the creditors in seeking to have the plan of reorganization withdrawn.

Before proceeding to the legal arguments, we briefly recount the history of the Rock Island since February, 1980. On March 19, 1980, the court entered Order No. 229, which required the Trustee to file a plan of reorganization by July 17, 1980, encompassing the liquidation of the assets of the debtor. On April 14, 1980, the court entered Order No. 232, which directed the Trustee to file an application with the ICC "for its report confirming the abandonment of the Rock Island's total railroad system subject to sale of portions of such system to other entities for their operation thereof."[6]

The ICC filed its report in response to the Trustee's application for system-wide abandonment on May 23, 1980. Docket No. AB-46 (Sub.-No. 22). The ICC concluded that "abandonment of the Rock Island and its dissolution as an operating railroad is required by the public convenience and necessity." Docket No. AB-46 (Sub.-No. 22) at 3. The ICC denied the RLEA's motion to reject the abandonment application. *Id.* at 5-6.

On June 2, 1980, the reorganization court held hearings concerning the proposed abandonment and ordered total system-wide abandonment of the Rock Island's lines and discontinuance of its service.

The Trustee already has taken various steps toward liquidating the Rock Island. On June 16, 1980, the RLEA moved for a stay of liquidation, detailing the progress of the liquidation as follows:

> Rolling stock leases have been assigned or terminated while other operating equipment has been sold. On

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[6] Section 17(a) of the Milwaukee Road Restructuring Act ("MRRA"), Pub. L. No. 96-101, 93 Stat. 736 (1979), transferred ultimate jurisdiction over abandonments from the ICC to the reorganization court for cases pending under Section 77 of the Bankruptcy Act. Section 17(a) of the MRRA provides that the court may authorize abandonments pursuant to 11 U.S.C. § 1170.

> May 5, 1980, the District Court entered Order No. 234 granting the Trustee blanket authority to liquidate real and personal assets and accounts under $100,000.00 in value. Real property, such as track rights of ways, has been sold. *See,* Docket Sheet Page 194-95. Also, an independent consultant has been retained by the estate to expeditiously liquidate the real property of the estate. Order dated May 28, 1980.

RLEA Motion to Stay at 5. On November 21, 1980, this court ordered that the RLEA's motion to stay further acts of liquidation pending appeal would be taken with the case at the time of its disposition.

On December 20, 1980 the RLEA filed with this court its "Emergency Renewal of Motion by Railway Labor Executives' Association to Stay All Further Acts of Liquidation Pending Appeal." The "Renewed Motion" was prompted by the Trustee's announcement of his intention to sell the Silvis, Illinois, facility and 214 locomotives to the Varlen Corporation. The RLEA argued that:

> [t]his single sale will surely decrease the already slim chances for reorganizing the Rock Island, for any resumption of rail operations over the core structure would encounter severe difficulties in resuming operations without sufficient engines and a major repair facility.

RLEA Renewed Motion at 4.

On December 24, 1980 we entered the following order:

> IT IS ORDERED that the renewed motion is DENIED to the extent that it seeks a stay of the sale of the properties mentioned in the intervenor-appellant's renewed motion. Intervenor-appellant has failed to satisfy all of the requirements for a grant of stay pending appeal. We cannot conclude at this point in our deliberations that the intervenor-appellant shall

prevail on the merits of this appeal.

> The intervenor-appellant's motion of June 16, 1980, seeking a general stay pending appeal in this case, shall be resolved at a later date by the merits panel.

We now reach the merits and conclude that the district court acted within its authority in refusing to transmit the Trustee's plan of reorganization to the ICC and in ordering the Trustee to commence liquidation of the Rock Island.

II

Section 77(d) of the Bankruptcy Act, 11 U.S.C. § 205(d), deals with the filing of a plan of reorganization in a railroad reorganization. The RLEA argues that the ICC is to play the major role in reorganizing a debtor under Section 77, and that Bankruptcy Rule 8-303 cannot enlarge the jurisdiction of the court to examine the merits of a plan prior to transmittal to the ICC pursuant to Rule 8-303.

First, the RLEA argues that the ICC has the primary responsibility for formulating a reorganization plan and that, therefore, the reorganization court should not have rejected the Plan before the ICC had a chance to consider it. The RLEA finds support for its argument in *Ecker v. Western Pac. RR. Corp.*, 318 U.S. 448 (1943), where the Supreme Court stated:

> When examined to learn the purpose of its enactment, § 77 manifests the intention of Congress to place reorganization under the leadership of the Commission, subject to a degree of participation by the court.

318 U.S. at 468. But, while recognizing the importance of the expertise of the ICC, the Supreme Court also recognized the power of the reorganization court to find that a debtor is unreorganizable. The Supreme Court acknowledged that the reorganization court can veto a reorganiza-

tion plan in its entirety after certification of the plan by the ICC. 318 U.S. at 474. *See* Section 77(e), 11 U.S.C. § 205(e).

The RLEA's reliance on *Ecker* to establish that the reorganization court should defer to ICC findings is misplaced. In *Ecker*, the Court affirmed the district court's approval, pursuant to Section 77(e), of a plan of reorganization certified by the ICC. The Court reversed the Ninth Circuit's finding that the district court should have exercised its independent judgment with respect to subjects such as valuation. A reorganization court's acceptance of ICC findings in proceedings pursuant to Section 77(e) simply is not relevant to the question of whether the reorganization court can order the Trustee to withdraw a proposed plan *before* submission to the ICC. *Ecker* dealt with the reorganization court's scope of review of a plan *after* certification by the ICC, not with a proposed plan submitted to the court by the Trustee.

Furthermore, in the more recent *New Haven Inclusion Cases*, 399 U.S. 392, 431-34 (1970), the Supreme Court emphasized the important, indeed dominant, role of the reorganization court in Section 77 proceedings. In that case, as in *Ecker*, the issue was the reorganization court's scope of review of ICC findings pursuant to Section 77(e). The Court stated:

> The statutory authority to appoint special masters and hold evidentiary hearings reflects the unique powers possessed by the reorganization court in passing upon the Commission's proposed plan of reorganization.
>
> . . .
>
> In the reorganization court reposes ultimate responsibility for determining that the plan presented to it by the Commission satisfies the "fair and equitable" requirement of § 77.

399 U.S. at 434. Without deciding to what degree *New Haven Inclusion Cases* erodes *Ecker's* deference to ICC expertise in Section 77(e) proceedings,[7] we find that the balance of power between the reorganization court and the ICC in Section 77(d) proceedings does not require the reorganization court to seek ICC consideration of a proposed reorganization plan when the court has found that the plan has no chance of success.

Next, the RLEA argues that the structure of Section 77(d) and Rule 8-303 show that the court's role with respect to the Trustee's plan is purely ministerial. The RLEA claims that the purpose of allowing the court to retain a plan for *not less than* 30 days is only for the sake of achieving efficiency by assuring that "all proponents of plans have filed their plans prior to transmission of the first filed plan to the Commission." Rule 8-303, Advisory Committee Note. We disagree. The ordinary outcome under Rule 8-303 will be that the court will transmit a plan to the ICC. But we cannot say that the court has no discretion whatsoever to aid in the efficient management contemplated by Rule 8-303 by refusing to transmit a manifestly unfeasible plan to the ICC.

Shortly after the Trustee's Plan was submitted, but before it was evaluated in light of the Peat, Marwick study, the reorganization court reflected on the purposes of Rule 8-303:

> Those purposes are obviously a preliminary review by the Court, of the proposal of alternative plans, and in the particular instances of this case an opportunity for the Court and the creditors and the Railroad, and the Government, to view this plan in the context of the Peat, Marwick evaluation of it. And under any ordinary circumstance that would not only be the ordinary

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[7] In his dissent, Justice Black complained of the majority's departure from *Ecker*. 399 U.S. at 499.

> course of the case but the wise course of the case. I think the thirty days is therefore a purpose. I recognize that the Court had very little discretion in this matter in terms of what it might do with the plan. It is conceivable to me, although I doubt that it will be applicable in this case, that the plan presented be one either by reading on its face or in the light of the Peat, Marwick evaluation, be one so completely without merit that the Court will not forward it to the Commission and order the preparation of another one, something more sensible.

Tr. of January 2, 1980 at 31-32. The court recognized that its discretion not to submit the plan to the ICC was limited to a situation that the court doubted would occur—that the plan was without merit in light of the Peat, Marwick study. But that situation did occur, and the court properly exercised its discretion not to transmit the plan.

The court's action did not circumvent ICC involvement in either the reorganization or liquidation process. The court did not simply withhold the Plan from the ICC and commence reorganization without ICC input. Rather, the court ordered the Trustee to prepare a new plan aimed at liquidation. In fact, the court stated that the January 25, 1980 decision not to transmit the plan to the ICC "starts now rather than later the process of private sale and Commerce Commission reorganization of railroad service . . . ." Tr. of January 25, 1980 at 98.

The ICC has not challenged the reorganization court's actions. At the hearing before the January 25 ruling, the government representative present informed the court that "[ICC counsel's] indication to me was that if your Honor finds that the plan has no merit and decides that you should order the Trustee to withdraw it, that the Commission would acquiesce in that decision." Tr. of January 25, 1980 at 56-57. In addition, the ICC's May 23, 1980 report recom-

mending abandonment supports the court's view. The ICC states that

> [w]e have reviewed the carrier's present financial position and future prospects and conclude that it has no realistic hope for reorganization or continued service in its present form. The extremely deteriorated condition of its plant and severe erosion of its traffic base (through interrupted and uncertain operations) make it clear that the Rock Island will not be able to recover. Consequently, fairness to its creditors and stockholders dictates that the carrier be liquidated.

Docket No. AB-46 (Sub.-No. 22) at 3-4.

In light of the ICC's deference to the reorganization court's view of the Trustee's plan, as well as that court's great familiarity with the Rock Island through five years of reorganization proceedings, it is inaccurate for the RLEA to argue that the court simply "substituted its judgment for that of the Commission." Reply Br. at 7. The court's decision must be viewed in the context of the entire history of the Rock Island. Judge McGarr stated in his January 25, 1980, ruling:

> I have listened to the Trustee for years through his counsel argue that I authorize and continue to be patient with the attempts to bring about a cash-based reorganization, based upon my finding of reorganizability. Mr. Manos argues in an abundance of emotion today that I should not decide that issue in four hours. I have in fact thought of very little else for four years. It has been the basic issue that I have confronted and the issue which I have had to decide over and over again as circumstances changed.

Tr. of January 25, 1980 at 95. Therefore, we hold that Judge McGarr's decision not to transmit the Trustee's plan

to the ICC violated neither Section 77(d) of the Bankruptcy Act nor Bankruptcy Rule 8-303.

III

The RLEA argues that, in addition to not having jurisdiction to decide that the Trustee's plan was without merit, the reorganization court did not have the jurisdiction to order the Trustee to liquidate the Rock Island. The RLEA claims that Section 1174 of the Bankruptcy Reform Act of 1978, 11 U.S.C. § 1174, for the first time permitted railroad reorganization courts to direct and control liquidations, and that Section 77 of the Bankruptcy Act, which applies to this case,[8] contains no authority for liquidation. Thus, the RLEA argues that the court may dismiss the petition for undue delay in reorganization, pursuant to Section 77 (g) and Bankruptcy Rule 8-310, but it may not unilaterally determine that the debtor is unreorganizable and order liquidation.

According to the RLEA's interpretation of Section 77, the reorganization court must either dismiss the petition for reorganization or continue reorganization. The RLEA does not acknowledge the possibility that liquidation may be the end result of a Section 77 reorganization. But the RLEA's view ignores the fact that it is difficult to mark the point at which an attempt to reorganize becomes a liquidation. It would be absurd to hold that the reorganization could may supervise liquidation of all but a small core railroad, yet cannot supervise the liquidation of much of the same property once the concept of a viable core has been rejected.

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[8] According to § 403 of the Bankruptcy Reform Act, some provisions of the new Bankruptcy Code are applicable to Section 77 cases pending before its enactment. But, Section 1174 is not one of those sections which applies to cases commenced under the Bankruptcy Act. Pub. L. No. 95-598, 92 Stat. 2683 (1978).

Section 77 does not set any limit on what portion, if any, of the debtor must be preserved pursuant to Section 77 proceedings. Section 77(b), 11 U.S.C. § 205(b) states:

> (b) A plan of reorganization within the meaning of this section . . . (5) shall provide adequate means for the execution of the plan, which may include . . . the *sale of all* or any part of the property of the debtor . . . .

(emphasis added). In *New Haven Inclusion Cases*, the Supreme Court discussed the reorganization court's power to sell the assets of the New York, New Haven & Hartford Railroad ("New Haven") pursuant to § 77(b) (5). After noting that the reorganization court and trustees were "charged with the dual responsibility of conserving the debtor's estate for the benefit of creditors and preserving an ongoing railroad in the public interest," 399 U.S. at 420, the Court stated:

> The provisions of § 77 "doubtless suffice[d] to confer upon the [reorganization court] power appropriate for adjusting property rights in the railroad debtor's estate and, as to such rights, beyond that in ordinary bankruptcy proceedings." *Id.*, at 85-86; cf. 5 Collier, *supra*, ¶ 77.11, at 498-499. Together, the court and the Commission "unquestionably" had "full and complete power not only over the debtor and its property, but also, as a corollary, over any rights that [might] be asserted against it." *Callaway v. Benton*, 336 U.S. 132, 147. One such power was precisely that which the Commission was about to propose that the reorganization court exercise—the power to confirm a plan of reorganization providing for "the sale of all . . . of the property of the debtor . . . ." Bankruptcy Act, § 77(b)(5), 11 U.S.C. § 205(b)(5).

399 U.S. at 421 (footnote omitted). *See also Matter of Lehigh Valley R.R. Co.*, 558 F.2d 137, 141-47 (3rd Cir. 1977)

and cases cited therein.[9] These cases indicate that each railroad in reorganization under Section 77 must be handled according to the unique circumstances of that debtor, and liquidation may be an appropriate option.

The RLEA does not seriously urge dismissal of this action and resort to equity receiverships for liquidation,[10] but it does ague that an equity receivership is the only way that the creditors of the Rock Island may withdraw their assets from public use at this time. The RLEA claims that

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[9] In *Lehigh Valley*, the Third Circuit stated that "these cases provide persuasive support for the proposition that the reorganization of a railroad may properly continue under Section 77 despite the fact that the enterprise is no longer capable of being reorganized into a working railroad." 558 F.2d at 146. The court concluded that the reorganization court had jurisdiction "to reorganize or liquidate the enterprise pursuant to § 77, or pursuant to any other provisions of the Bankruptcy Act, if the court finds that such action would be in the best interests of the debtor's estate." 558 F.2d at 146-47.

The RLEA argues that the Lehigh Valley reorganization court's authority to liquidate under Section 77 comes from § 618(b) of the Railroad Revitalization and Regulatory Reform Act of 1976, which added § 601(b)(4), 45 U.S.C. § 791, to the Regional Rail Reorganization Act of 1973 ("Rail Act"), Pub. L. 93-236, 45 U.S.C. §§ 743, 744. But *Lehigh* and the cases discussed therein actually stand for the opposite result: the amendment authorized the continuation of Section 77 proceedings *despite* the special provisions in the Rail Act which transferred working railroad property to Conrail. 558 F.2d at 141-42.

[10] One of the reasons for enactment of Section 77 was to avoid equity receiverships for railroads. As stated in *New Haven Inclusion Cases*:

> Congress enacted [Section 77] in part "to prevent the notorious evils and abuses of consent receiverships," *New England Coal & Coke Co.* v. *Rutland R. Co.*, 143 F.2d at 184, of which one of the more egregious was the requirement of an ancillary filing and order of appointment in the federal court for every district in which the debtor had property.

399 U.S. at 426-27.

since the creditors have enjoyed the benefits of having a single resolution of all claims, rather than many receiverships, they should bear the burden of serving the public interest by keeping their property invested in rail service. But the history of this case indicates that the reorganization court has duly considered the public interest throughout the reorganization proceedings and has determined that continued operation of the Rock Island no longer serves the public interest. Thus, the liquidation order does not violate the public interest considerations required by Section 77.

In summary, the reorganization court had the jurisdiction under Section 77 to decline to accept the Trustee's Plan and to order the Trustee to formulate a plan of liquidation. Furthermore, the reorganization court properly exercised its discretion in exercising that jurisdiction. Because of our holding on the merits, it is unnecessary to reach the Creditors' argument that this case is moot.

The order appealed from is

AFFIRMED.

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